The Third Respondent's appeal to the High Court (Administrative Division) has been struck out, and the Tribunal's Order remains in force.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11007-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

SIMON PAUL KENNY First Respondent

and

EMMA COATES Third Respondent

Before:

Mrs K. Todner (in the chair)
Ms A. Banks
Mrs N. Chavda

Date of Hearing: 18th-22nd March 2013
and 22nd May 2013

Appearances

David Barton, Solicitor Advocate of 13-17 Lower Stone Street, Maidstone, Kent, ME15 6JX for the Applicant.

The First Respondent appeared for the first of the preliminary matters. Thereafter he took no further part in the proceedings. He was unrepresented.

The Third Respondent appeared and was represented by Mr Richard Egleton, Counsel, of Pallant Chambers, 12 North Pallant, Chichester, West Sussex PO19 1TQ.

JUDGMENT

The proceedings against the Second Respondent, Richard Deighton, were severed and the allegations against him were due to be heard by the Tribunal on 18 July 2013.

Allegations

1. The allegations against the First Respondent, Simon Paul Kenny were that:-

1.1 In breach of Rule 32 (16) of the Solicitors Accounts Rules 1998 he used a suspense client ledger account which could not be justified;

1.2 In breach of Rule 15 (2) of the Solicitors Accounts Rules 1998 he improperly held money other than client money in client account;

1.3 In breach of Rule 22 (1) of the said Accounts Rules he withdrew money from client account in circumstances other than permitted and utilised the same for his own benefit or for the benefit of others not entitled thereto;

1.4 In breach of Rule 1.02 of the Solicitors Code of Conduct 2007 he failed to act with integrity when he gave his reporting accountant Mr "RF" false and misleading information in either or both of the following respects:

1.4.1 In or about May 2009 that he had transferred or drawn on client money to keep it safe, whereas the true position was that a shortfall existed, and/or

1.4.2 as to the source of money deposited in his client account;

1.5 In breach of Rule 1.02 of the Solicitors Code of Conduct 2007 he failed to act with integrity when on the 30 September 2010 he submitted to AON a professional indemnity insurance proposal form that was misleading;

1.6 In breach of Rule 12.01 of the said Code he practised with Emma Coates in a partnership which had not been recognised by the Authority;

1.7 In breach of Rule 5.01 of the said Code he failed to make arrangements for the effective management of the firm as a whole and in particular:

1.7.1 For compliance with his duties as a principal to exercise appropriate supervision over all staff;

1.7.2 For compliance by the firm and individuals with key regulatory requirements, in this case compliance with the Solicitors Accounts Rules 1998 and the Code 2007;

1.7.3 For financial control of budgets, expenditure and cash flow.

Allegations 1.3, 1.4.1 and 1.4.2 were put as ones of dishonesty, although it was not necessary to establish dishonesty to substantiate any of them.

2. The allegations against the Third Respondent, Emma Coates were that:-

2.1 In breach of Rule 15 (2) of the Solicitors Accounts Rules 1998 she improperly held money other than client money in client account;

2.2 She withdrew moneys from client account in breach of Rule 22 of the said Accounts Rules and utilised the same for her benefit or for the benefit of others not entitled thereto as follows;

2.2.1 Between February and December 2010 she withdrew £301,771.45 alternatively £303,659.99 from client bank account utilising a ledger in her name;

2.2.2 She withdrew £19,542.23 (being part of the sums referred to in 2.2.1 above) from client bank account in respect of personal payments for Kensington Mortgages, Hot Tub Barns and drawings;

2.2.3 She authorised the improper withdrawal of £4,825.00 being money credited to the ledger of a client Mr "K";

2.2.4 She improperly withdrew money totalling £37,500 from client bank account purportedly in respect of bills drawn on the estate of Mr "PR" deceased of which £27,731.15 was utilised for a holiday for herself and others in Barbados;

2.3 She failed to act in the best interests of the client contrary to Rule 1.02 of the Solicitors Code of Conduct 2007 when she improperly charged to the said estate of Mr PR deceased monies totalling £30,058.36;

2.4 In breach of Rule 32 (16) of the said Accounts Rules she maintained a suspense client ledger account which could not be justified;

2.5 Contrary to Rule 20.05 of the Solicitors Code of Conduct she failed to deal with the Authority in an open prompt and cooperative way.

Allegations 2.2.1, 2.2.2, 2.2.3 and 2.2.4 were put as ones of dishonesty, although it was not necessary to establish dishonesty to substantiate any of them.

Documents

3. The Tribunal reviewed all the documents submitted by the parties, which included:

Applicant:

In relation to the First Respondent:

- Application dated 31 May 2012;
- Rule 5 Statement dated 31 May 2012;
- Application by the Applicant for leave to amend Rule 5 Statement dated 11 March 2013;
- Amended Rule 5 Statement dated 11 March 2013;

- Exhibit Bundle DEB1;
- Digital recording of interview of the First Respondent 19 May 2011;
- Email dated 21 May 2013 to the First Respondent detailing costs.

In relation to the Third Respondent:

- Application dated 31 May 2012;
- Rule 8 Statement dated 31 May 2012;
- Exhibit Bundle DEB1;
- Copy invoices and cheque in relation to the provision of gardening services at 8 Grove Road.
- Handwritten Applicant's Schedule of Costs dated 22 May 2013.

In relation to both Respondents:

- Applicant's Skeleton Argument dated 13 March 2013;
- Witness Statements of Susan Jane Dryden dated 8 January 2013, 18 February 2013, 28 February 2013 and 28 February 2013;
- Witness statement of Mr George White dated 28 February 2013;
- Witness statement of Coral Armistead dated 15 January 2013;
- Witness statement of Jacqueline Lorraine Heath dated 19 February 2013;
- Witness statement of Gillian Lawrence dated 21 February 2013;
- Witness statement of Mrs RF dated 15 March 2013 ;

<u>First Respondent</u>:

- In relation to disclosure:
    - First witness statement of Sally Jane Kenny dated 31 December 2013;
    - First witness statement of Barbara Kenny dated 2 January 2013;
    - First witness statement of the First Respondent dated 2 January 2013;
    - Second Witness statement of the First Respondent dated January 2013 (otherwise undated);
    - First witness statement of Mr "SH" dated 2 January 2013.
- Application for an adjournment dated 13 March 2013, including two medical reports dated 23 January 2013 and 5 March 2013 and a Chronology;
- Reply to Rule 5 Statement dated 3 October 2012;
- Position Statement for the Hearing on 18 March 2013, including Personal Circumstances Statement and Witness Statements of Simon Paul Kenny dated 17 October 2012 and of Mrs Barbara Kenny dated 15 February 2013;

- Letter to the Tribunal dated 22 May 2013, enclosing letter to Mr Barton dated 16 May 2013 and letter from Jobcenterplus dated 13 May 2013.

Third Respondent

- Copy transcript of interview of the Third Respondent on 25 May 2011;
- Numerous copy documents were presented to the Tribunal during the Hearing as follows:
    - Email dated 12 October 2010 at 16:54 from Mr TR to the Third Respondent, together with an email from the Firm of the same date (Exhibit EC/1);
    - Client account ledger of Mr K from 12 November 2010 to 1 January 2011 (Exhibit EC/2);
    - Client account ledger of Mr K from 12 November 2010 to 14 March 2011 (Exhibit EC/3);
    - Firm's invoice number 2139 relating to Mr K in the sum of £235 (Exhibit EC/4);
    - Firm's invoice number 2236 relating to Mr K in the sum of £4,825 (Exhibit EC/5);
    - CK Solicitors office account statement for 23 April 2010 (Exhibit EC/6);
    - N1 claim form and Particulars of Claim against both Respondents and CK Solicitors in the High Court dated 9 November 2012 (Exhibit EC/7);
    - Defence and Part 20 Claim of First Respondent in the civil proceedings (Exhibit EC/8);
    - Power of Attorney of Mr PR(Exhibit EC/9);
    - Firm's invoice number 1960 relating to the estate of Mr PR in the sum of £7000 (Exhibit EC/10);
    - Firm's invoice number 1961 relating to the estate of Mr PR in the sum of £12,500 (Exhibit EC/11);
    - Firm's invoice number 1962 relating to the estate of Mr PR in the sum of £15,000 (Exhibit EC/12);
    - CK Solicitors office account statement for 20 to 22 May 2009 (Exhibit EC/13);
    - Estate agents particulars relating to 8 Grove Road Selsey (Exhibit EC/14);
    - Internal mail envelope marked "MMA 16/7/09", together with enclosure relating to the division of £123,000 (Exhibit EC/15);
    - Email from Mr TR to the Third Respondent dated 8 February 2011 at 18:49, together with email dated 7 February 2011 at 16:26 from Babcock Tax and Accountancy Services Ltd (Exhibit EC/16);
    - Print out of "billing by Fee Earner" for December 2009 to November 2010 (Exhibit EC/17);

- Letter from CK Solicitors to another Firm of solicitors relating to Kensington Mortgage Company Ltd dated 18 March 2009 (Exhibit EC/18);
- Email dated 9 June 2009 from Mr TR to the Third Respondent (Exhibit EC/19).

Tribunal:

- Memorandum of Case Management Hearing on 6 September 2012;
- Memorandum of Case Management Hearing on 12 November 2012;
- Memorandum of Adjournment of Case Management Hearing on 10 December 2012;
- Memorandum of Case Management Hearing and Application by the First Respondent for full disclosure by the Third Respondent on 9 January 2012.

Preliminary Matter (1)

4. The First Respondent indicated that he would make an application for the allegations against him to be dismissed on the basis that he had been deprived of evidence. He would also make an application for an adjournment.

The application for dismissal by the First Respondent

5. The First Respondent told the Tribunal that on the day of the intervention into CK Solicitors ("the Firm") by the SRA a number of financial documents, key to his case before the Tribunal, were held at his home address. Susan Dryden, the representative of the intervention agent, had insisted that the documents were returned to the offices of the Firm and the fact that they had been so delivered was agreed by all parties. However, those documents had not seen the light of day since that day. The Third Respondent had been served with several witness statements concerning the missing documents but there had been no response from her, other than that they have must have been taken by a Mr SH the following day.

6. In the First Respondent's submission these documents, which consisted of seven lever arch files, showed a clear and consistent pattern by the Third Respondent of removing monies from the practice for her own or others' use. The documents were littered with hand written notes as to how payments should be attributed and the First Respondent said that personal payments had been put down to office expenditure. Through no fault of his own he had been deprived of those documents and it was difficult for him to deal with the allegations without them. His understanding was that the intervention agents had an obligation to preserve client monies but these documents, which related to office expenditure, would not normally be of interest to them. These documents were relevant to the issue of where the monies had gone. The First Respondent accepted that there was a deficit on client account but the relevance of these documents went to both his defence of the disputed allegations and to mitigation. In his submission, the missing documents showed the extent to which he was at fault.

7. He therefore asked for the proceedings to be dismissed in their entirety and/or the dishonesty allegations against him to be dismissed.

The application for an adjournment by the First Respondent

8. The First Respondent said that he had very recently been told by the Sussex Police that he would be formally interviewed in relation to some of these matters. He had received advice that he should not take part in these proceedings for the time being as it could prejudice his position in any criminal proceedings which would arise out of the same circumstances. He had limited resources and had attempted to deal with these matters on his own. In addition, two of the witness statements before the Tribunal were statements given to the Police and so these proceedings were clearly interconnected with the Police investigation. He had been informed by the Sussex Police that the Third Respondent was also to be interviewed. In the First Respondent's submission these proceedings against him should be adjourned until the position with any criminal proceedings became clear.

9. Neither was the First Respondent in a position to proceed due to the lateness of delivery of some of the evidence and the relevance of the material delivered. He had placed a Chronology before the Tribunal which showed that a large amount of material had been delivered by the Applicant in the last 21 days. He went through that Chronology and also said that on 7 March 2013 he had been informed there would be an application to amend the Rule 5 statement and add a new allegation. In the context of this case, he had first asked Mr Barton for documents as long ago as the 1 August 2012 and no documents had been served at all upon him until 19 December 2012. He had not received copies of the accounting material until January 2013 and that had been on a hard disc drive which he was unable to read without the appropriate software. Mr Barton had indicated that he did not have that software. Within the last 30 days he had received a huge amount of material, some of it by email, but he had no printer with which to print it out. The disclosure that he had received had been in five boxes with some twenty files; all but two of those files had been irrelevant to the proceedings he had still had to go through them and in some cases he had had to do so two or three times. He had no access to the office premises and the Third Respondent had all of the office equipment; in contrast he had a second-hand printer and computer.

10. The First Respondent also had issues with his health. He said that he suffered from hypertension and stress caused by the collapse of his life. The clear advice from his GP and consultant was that he should avoid stress but he could not avoid it. He was not saying that he was not well enough and he could get by managing his time. He had very recently had to deal with an application at Court to recover monies and an application to the High Court by Mr George White who was also pursuing the Third Respondent. He did not dispute that Mr George White was owed money. He now also found himself in a position where there was a possibility of criminal proceedings and as a result he could not deal properly or effectively with these proceedings.

11. The First Respondent told the Tribunal that he had not practised since May 2011. He was not dealing with client money; he was not a risk to the public. He had come back from Australia specifically to deal with this matter and there would be no prejudice to any third party in adjourning the case against him.

The Submissions of the Applicant on the First Respondent's applications

12. In Mr Barton's submission, since the First Respondent had been served with witness statements on 22 February 2013 by courier, this had been within the 21 day period permitted for service. On 8 February 2013, he had received a complete copy of everything the intervention agents had from PC Law, the computerised accounts system used by the Firm, by email. This was the first time Mr Barton had been told that the First Respondent had difficulty with the emails. The documents that had been sent on 8 February had been addressed by Susan Dryden in her third witness statement. There had been only two witness statements which had been served late and these were the short third and fourth statements of Susan Dryden which addressed matters of procedure.

13. The First Respondent had said that the material supplied was not what he wanted as it only dealt with client matters. However, in Mr Barton's submission, it could be seen that the material supplied did deal with the issues raised by the First Respondent and Susan Dryden had dealt with those points in her third and fourth witness statements. The First Respondent had had the information since 8 February 2013 and in Mr Barton's submission it demonstrated how the Third Respondent had taken money from the office account and the First Respondent had not said why the information was insufficient. It was unknown as to whether Susan Dryden's evidence in her third witness statement was accepted or not. The case was all about taking money from client account and it was not known whether the First Respondent had considered the contents of Susan Dryden's third witness statement or the documents referred to in it which had been supplied to him. It was not at all clear why he said that the 364 page audit trail did not assist; Mr Barton suspected that it was littered with examples that would assist the First Respondent. These were very serious allegations and Mr Barton observed that neither of the Respondents had taken any proper steps to explain what had occurred since the proceedings had started, with the exception of the First Respondent's response to the Rule 5 Statement.

14. In summary, insofar as the First Respondent's submission on late service was concerned, the evidence on the substantive issues had not been served late. The financial information had been served on 8 February 2013 and the evidence which had been served late was two short witness statements which dealt with disclosure issues.

15. There were undoubtedly significant issues between the First and Third Respondents, some of which the SRA could not answer. As late as the previous week the Third Respondent had sent him several documents. Mr Barton could not elicit any information from the Third Respondent and she had not made a personal statement or delivered the statement of any witnesses; Mr Barton still did not know where she stood on these issues and it was unsatisfactory. Previous divisions of the Tribunal had attempted to manage the case and so far as the SRA was concerned it was now ready for hearing.

16. Mr Barton took the Tribunal through a short history of the matter and referred to Susan Dryden's first witness statement. In that statement she said that the intervention agent did not hold the files that the First Respondent was seeking. She also said that she and her team had been let out of the office by Mr SH and that he had been the last

person to leave the premises and not the intervention agents, as stated by the First Respondent. The First Respondent had not addressed this point. If the First Respondent had been required to leave the premises earlier then that had not been at the intervention agents' instigation. It could be seen from Susan Dryden's statement that the intervention agents were not interested in the business of the Firm, such as the office account; they were present to collect material relating to clients. The Third Respondent had remained silent on the issue but it could be seen that Susan Dryden's witness statement was at odds with the submissions made by the First Respondent.

17. The First Respondent had been provided with a complete copy of the Firm's hard drives and the Applicant did not have the software. All the documents had been sent to the First Respondent on 8 February and everything was in PC Law in any event.

18. Mr Barton's position was that the Applicant had made every effort to supply the First Respondent with the documentation he sought and he had been given a significant amount of documentation. Susan Dryden's third witness statement explained why he now had everything that was necessary to his defence. In Mr Barton's submission both Respondents had to explain how over £500,000 had been spent between mid-July 2009 and the end of December 2010. It was wholly unsatisfactory that they sought to blame each other.

19. In Mr Barton's submission, it would be inappropriate for the Tribunal to dismiss the allegations either in whole or in relation to those disputed by the First Respondent; he was liable as a principal of the Firm. The best he could say would be that he didn't know what was happening but it did not absolve him from responsibility; someone needed to be accountable.

20. Mr Barton said that he made no comment upon the submissions of the First Respondent relating to his application for an adjournment based upon his health and any prospective criminal proceedings.

<u>The submissions of the Third Respondent on the First Respondent's application</u>

21. Mr Egleton said that in so far as the First Respondent's submission for dismissal on the basis of the missing seven lever arch files, which allegedly contained material pointing to the Third Respondent, was concerned, his client disputed that there was any such material or that it had been removed. Susan Dryden's first statement showed that material had been brought in to the office by the First Respondent on the day of the intervention but that the intervention agents believed that they had not removed that material and that they would have left it at the premises. The statements of Sally and Barbara Kenny concerning disclosure appeared to show that the number of files had not been specified and Barbara Kenny had said in her statement that the First Respondent had gone through those files and made records on his computer. There was no evidence that the Third Respondent knew about those files or had anything to do with their disappearance. It appeared from what the First Respondent had to say that these files contained a "silver bullet"; if that was the case then it was bizarre that he had not made copies and what he said was belied by the contents of Barbara Kenny's statement in any event.

22. Mr Egleton told the Tribunal that his client was in the same position as the First Respondent on the late delivery of some evidence.

23. Mr Egleton confirmed that the Third Respondent had also been called for interview with the Police on the day before the First Respondent was due to be interviewed. The Tribunal's own Policy/Practice Note on Adjournments did not support an adjournment in these circumstances. Proceedings were not imminent and neither of the Respondents had been arrested, let alone charged. In Mr Egleton's submission the application was premature. He also noted that it was the First Respondent who had complained to the Police and not Mr George White.

24. The Third Respondent did not seek an adjournment and adopted the Applicant's position in relation to a dismissal. The First Respondent had mentioned ill health and yet he was currently part of two civil proceedings, one with Mr George White and the other against the Third Respondent. The First Respondent had been very active in those proceedings and had shown both alacrity and diligence. His conduct belied the idea that he was not capable of dealing with these proceedings due to his ill-health.

The Tribunal's Decision on Preliminary Matter (1)

25. The allegations against both of the Respondents were very serious and had already been the subject of applications for disclosure before the Tribunal. However the Tribunal still had no full response to the allegations from the First Respondent and nothing at all from the Third Respondent.

26. In relation to the First Respondent's application to dismiss the proceedings on the lack or lateness of disclosure, the Tribunal found as a matter of fact that evidence had been served within the necessary timescales save for the short third and fourth witness statements of Susan Dryden, which themselves had been produced in response to points made by the First Respondent.

27. Reference had been made to the loss of several or seven lever arch files. However it was impossible to say how that loss had arisen or the relevance of the contents; neither was it possible for the Tribunal to reach any conclusion as to who was responsible for the non-production of the files. It seemed very unlikely that, even given time, those files would ever be recovered.

28. The Tribunal did not consider that the First Respondent had been prejudiced by any perceived lack of documentation. The evidence he had produced himself showed that he had gone through the files and documented the results.

29. The Tribunal had concluded that the allegations had been prosecuted fairly and that the proceedings should continue.

30. In respect of the application for an adjournment the Tribunal had considered the case of R v The Solicitors Disciplinary Tribunal ex parte Gallagher 30 September 1991 (unreported). Sir John Donaldson MR had said in that case "each case will depend upon the facts and if it appears to allow the proceedings to go forward would muddy the waters of justice, then it would be appropriate to adjourn or take some other course to ensure that those waters were not muddied." The Tribunal had also

considered its own Policy/Practice Note on Adjournments. No arrests or charges had yet been made by the Police in this case and indeed it appeared that the First Respondent himself was the complainant, since this had been stated by Mr Egleton and had not been disputed by the First Respondent. The criminal process could well take more than a year to be resolved and these serious allegations should not await that process; there was in the view of the Tribunal no danger of "muddying the waters of justice" and proceedings were not "imminent".

31. The medical reports produced by the First Respondent did not state that he was unable to partake in the hearing. Indeed, he had been able to partake in civil proceedings as recently as the previous week.

32. The Tribunal had fully examined the circumstances surrounding the First Respondent's application for an adjournment and had concluded that in all those circumstances it was proper that the hearing should proceed.

The First Respondent's response to the Tribunal's decision on preliminary matter (1)

33. The First Respondent said that he hoped that the Tribunal would accept that he meant no discourtesy to the Tribunal to or to the profession but he felt constrained to accept the advice he had received not to take part in proceedings before the Tribunal whilst there was a potential for criminal proceedings to arise out of the same issues. He then supplied the Tribunal with a Position Statement and supporting documents which he said may assist it in its deliberations. The First Respondent then left the hearing.

Preliminary Matter (2)

34. Mr Barton made an application for leave to amend the Rule 5(2) Statement dated 31 May 2012 in respect of the First Respondent. His application for leave to amend was before the Tribunal and was dated 11 March 2013. Mr Barton told the Tribunal that he sought permission to amend the statement of allegations by the inclusion of a new sub-paragraph 1.4.1 in respect of allegation 1.4 and the addition of paragraphs 42 and 43 in respect of that new sub-paragraph. The new sub-paragraph 1.4.1 made an assertion of fact which the First Respondent had notice of and had addressed. In paragraph 1.4 it was said that the Respondent had given his reporting accountant false or misleading information. The new sub-paragraph added:

> "In or about May 2009 that he had transferred or drawn on client money to keep it safe, whereas the true position was that a shortfall existed"

35. It was the Applicant's position that the First Respondent had said that to his reporting accountant, which the First Respondent denied. The First Respondent said he had links to both Thailand and Australia and the SRA had seriously considered whether he may have sent money abroad but the Applicant's position now was that no money had ever been sent away. In Mr Barton's submission, the First Respondent's statement to his reporting accountant, Mr RF, had been an untruth. In the second witness statement of Susan Dryden she said that a reconciliation of the pre-computer crash ledgers showed a significant shortage on client account as at 1 December 2008. The factual basis of this addition to the allegations was not new.

36. Mrs RF had now signed her witness statement and this had been served by email on both of the Respondents with Civil Evidence Act 1995 notices. The First Respondent had not responded and the Third Respondent had stated that she had no objection. Mrs RF would not be attending to give evidence and Mr Barton said that since her statement was hearsay he was content to proceed without it. It did however have evidential value.

The Tribunal's Decision on Preliminary Matter (2)

37. The Tribunal had read the Applicant's Application for Leave to Amend and listened carefully to what Mr Barton had had to say. Since the additional matters were already well known to the First Respondent and he had had ample opportunity to respond to them, the Tribunal would allow the amendments.

Factual Background

38. The First Respondent was born on 3 June 1956 and admitted to the Roll of Solicitors on 1 May 1981. At all material times he practised as a sole principal of CK solicitors from offices at Clock House, 128 High Street, Selsey, Chichester, West Sussex. The SRA intervened into his practice on 25 May 2011 as a consequence of which his practising certificate was suspended and he had not practised since. At all material times the Third Respondent was employed or remunerated by CK Solicitors.

39. On 8 March 2011 Mr Whitmarsh, an Investigation Officer employed by the SRA commenced an investigation of the books of account and other documents of the Firm. He made a preliminary report ("the First Report") dated 31 March 2011.

40. The First Report revealed issues that required further detailed investigation, but it was sufficient to identify serious breaches of the Solicitors Accounts Rules 1998 and of the Solicitors Code of Conduct 2007. Mr Whitmarsh delivered a second forensic investigation report ("the Second Report") dated 3 November 2011 after he was able to examine in more detail the issues he had identified in the First Report.

41. The First Report established that:

41.1 On 8 March 2011 Mr Whitmarsh met with the First Respondent who gave him details of the Firm's history. He said he co-owned the business with the Third Respondent, a Fellow of the Institute of Legal Executives and the person with whom he had conducted a personal as well as a business relationship. He also said he was a Deputy District Judge;

41.2 The First Respondent jointly operated the client bank account with the Third Respondent and the Third Respondent could operate it by herself;

41.3 There was a minimum cash shortage on client account of £126,516.19 as at 31 January 2011. Mr Whitmarsh was unable to fully establish the cause of the shortage;

41.4 A suspense client ledger account existed, which was used to record the introduction of money into client account, and unallocated transfers from client to office account

during the period July 2009 to 31 December 2010. The suspense client ledger bore the number 2-009 and was in the name of the Third Respondent. It was not operated temporarily but long term and resembled the operation of a bank account.

41.5 On 31 July 2009 the suspense ledger was credited with a payment of £300,000. The accompanying narrative indicated that the money had been transferred from another client ledger; that ledger was also in the name of the Third Respondent and was numbered 2-001. An examination of that ledger revealed that it had been credited with the payment of the £300,000 on 13 July 2009 accompanied by the narrative "White – on account of costs".

41.6 As at 13 July 2009, before the transfer was effected, the ledger 2-009 was overdrawn by £77,050.76 and that transfer put it into credit by £222,949.24;

41.7 The transactions conducted and allocated to ledger 2-009 between 13 July and 31 December 2010 put it back into overdraft in the sum of £301,771.45. The withdrawals during that 18 month period totalled £524,720.69;

41.8 By 31 January 2011 the debit balance on the ledger was £39,155.41 and the First Respondent was unable to offer any explanation to account for it. The Third Respondent said that in her view she was entitled to draw against her entitlement to her capital;

41.9 That the First Respondent had provided misleading information to his professional indemnity insurers for the year commencing October 2009.

42. The circumstances revealed by the First Report, taken in conjunction with a letter from the First Respondent dated 4 May 2011, led to further investigations and a Second Report.

<u>Allegation 1.1 against the First Respondent and allegation 2.4 against the Third Respondent</u>

43. Ledger 2-009 in the name of the Third Respondent was said by the First Respondent to have been used to account for £300,000 of capital introduced to the Firm by the Third Respondent and that money was credited to client account. The First Respondent said that it was a suspense account.

44. This suspense account was used to record the discharge of a number of personal expenses. It recorded the credit of office money, being a loan from Mr George White.

<u>Allegation 1.2 against the First Respondent and allegation 2.1 against the Third Respondent</u>

45. The sum of £300,000 was credited to ledger 2-009 via ledger 2-001, both in the name of the Third Respondent. Mr Whitmarsh was informed that ledger 2-001 was first created to deal with the Third Respondent's claim against her former employers which was settled before November 2008, being the date of the first entry. It was subsequently credited with the £300,000 loan from Mr George White on 13 July 2009 and on the same date those funds were transferred to ledger 2-009.

46. Mr Whitmarsh noted that the client account bank statement showed that the credit of 13 July 2009 used the narrative "George White". In their interview with Mr Whitmarsh both Respondents said that the money had come from Mr George White, a former client of the practice.

47. During her interview, the Third Respondent provided Mr Whitmarsh with copies of two letters dated 12 May 2009 and 19 August 2009 from the First Respondent to Mr George White which he had not seen before. The First Respondent had not told him about the loan, and had not shown him any letters. Mr Whitmarsh concluded that the loan of £300,000 from Mr George White was to be used as working capital and that as office money it should have been paid into office account. Mr White was given security for the loan on the Third Respondent's property.

48. The First Respondent's letter to Mr George White dated 12 May 2009 was a specific request for the introduction of working capital, identifying on the first and second pages of the letter the areas in which the Firm required such working capital.

49. The second letter dated 19 August 2009 recorded the progress made after the first letter. By then Mr George White had paid £300,000 to the Firm which had been routed to ledger 2-009 and paid into client account. The letter summarised the security to be provided by the Third Respondent who was the registered proprietor of the two properties specified. During Mr Whitmarsh's initial visit to the Firm in March 2011 both the First Respondent and the Third Respondent explained to him that when the £300,000 was introduced to the business there was concern whether it should be placed in office or client bank account, and between the two of them they decided to place the funds into client account.

50. Ledger 2-009 did not record a running balance and Mr Whitmarsh had to reconstitute it so that running balances could be properly seen. It was overdrawn by £77,050.76 on the day it was credited with the £300,000. The payment into client account had the consequence of mixing client and office money for a significant period of time, a position aggravated by the fact that the ledger was not kept in chronological order and was used to record large numbers of round sum withdrawals and personal expenses utilising identical narratives, with no constraint when it became significantly overdrawn.

51. The Third Respondent explained to Mr Whitmarsh in interview on 25 May 2011 that she had received accountancy advice that it was more tax efficient to run her separate businesses to the same tax code as that of the Firm and that office money, wherever it was held, included funds that she could draw on for such businesses.

<u>Allegation 1.3 against the First Respondent and allegation 2.2 against the Third Respondent</u>

52. Mr Whitmarsh calculated that as at 31 January 2011 there was a minimum cash shortage on client account of £126,516.19. The First Respondent said to Mr Whitmarsh that he was unable to offer an explanation for it.

53. The investigation revealed that money was withdrawn from client account utilising ledger 2-009. It was overdrawn on the opening date by £4,500. By the date upon which the sum of £300,000 was credited on 30 July 2009 the overdrawn balance had

increased to £77,050.76. A review of the reconstituted ledger to that date showed that there were 23 debits using the narrative "C to O on account of costs". With one exception they were all round sum withdrawals. One item dated 12 June 2009 in the sum of £4,000 was a payment to Kensington Mortgages for the Third Respondent.

54. The payment of £300,000 on 13 July 2009 put the ledger into credit by £222,949.24 although it was overdrawn again by 8 February 2010 in the sum of £1,116.99. Over the period to 29 December 2010 that debit balance increased to £301,771.45. A review of the narratives applied to the withdrawals debited to the ledger suggested that the money invested by Mr George White was not used for any of the purposes set out in the First Respondent's letter to him of 12 May 2009, by which date the 2-009 ledger was already more than £50,000 overdrawn.

55. Mr Whitmarsh calculated that during the period 13 July 2009 to 8 February 2010 funds withdrawn from client account through the Third Respondent's ledger account 2-009 totalled £224,066.23. Between 8 February 2010 and 31 December 2010 the sum withdrawn was £302,543. These items totalled £526,609.23, which was withdrawn in less than 18 months.

56. The figures revealed by Mr Whitmarsh's investigation revealed a cash shortage on client account of at least £300,000.

57. During the period 30 July 2009 to 31 December 2010 withdrawals from client account were made as follows:

(1) "CK Office on account of costs" x 80

(2) "CK Office monies owed to client" x 31

(3) "Capital Monies owed to client" x17

(4) Personal; payments to the Third Respondent and her drawings x7

58. None of the costs transfers was allocated to a client ledger and each was for a round sum. The total taken in respect of such costs was £318,375. Of this £127,575 was taken after 8 February 2010. Debits described as "Monies owed to client" and "Capital monies owed to client" after this date totalled £169,804 and neither Respondent could account for it.

59. In his explanation dated 11 November 2011 the First Respondent stated that:

59.1 He was aware that client account was apparently overdrawn, although he was not aware of the extent. He said his first priority was to remedy the overdraft and that the whole £300,000 should be placed into client account until the position became clear;

59.2 The first purpose of the £300,000 was to ensure that there was no deficit on client account;

59.3 He was not aware of the personal payments for the Third Respondent made out of client account which he did not authorise;

59.4 Jackie Heath, the bookkeeper, had set up various descriptions for common entries to cut down on keying-in time when posting entries;

59.5 He was not aware of the extent of the round sum transfers identified by Mr Whitmarsh;

59.6 He described how his personal relationship with the Third Respondent had broken down in the 2007 and thereafter they had continued a business relationship. In disavowing any knowledge of withdrawals made by her he said:

> "I accept that my level of trust meant that I did not supervise her as closely as I would with an employee".

60. The First Respondent was responsible as principal for all withdrawals.

61. In his letter to Mr Whitmarsh dated 4 May 2011 the First Respondent stated that in the main transfers from client to office account were

> "… Transfers of capital required to meet outgoings on office account. Some entries were global sums transferred in respect of costs on a number of files and the sums were subsequently allocated to the correct files."

The analysis showed that the withdrawals went significantly beyond transfers of capital, which should have been confined to the sum of £300,000.

62. On 19 May 2011 in interview the First Respondent told Mr Whitmarsh that he anticipated an analysis of the client cash account would enable some of the transfers in respect of costs to be allocated to the client which they related. He agreed that the totality of the transfers would not be capable of being allocated.

63. The analysis carried out by Mr Whitmarsh revealed that four personal payments were made from client ledger 2-009 to or for the benefit of the Third Respondent. These were to Kensington Mortgages on 20 July and 29 September 2009, Hot Tub Barns on 4 September 2009 and to the Third Respondent on 23 October 2009. There were further payments to her in respect of drawings of £2,600.

64. A bill in the sum of £4,825 was drawn but never delivered in the matter of Mr K but the sum was transferred from client to office bank account on 10 March 2011.

65. The Third Respondent acted for the executors in connection with the administration of the estate of Mr PR deceased who died on 13 May 2009. Mr Whitmarsh reviewed the file on 15 August 2011 and it did not contain a copy of a retainer letter setting out the basis upon which the estate was to be charged fees. The Third Respondent charged to the estate sums totalling £67,558.36. In addition there were three transfers from client account to office account said to have been in respect of bills which totalled £37,500. Each transfer was for a round sum of respectively £15,000, £12,500 and £7000. The Executor of the estate of Mr PR, Mr "TR", said that he had not received any bills. During her interview on 25 May 2011, the Third Respondent told Mr Whitmarsh that payments made from office account at around the same time related to a holiday for her and the staff and that the First Respondent was aware of this. The office bank

account statements showed that the payments totalling £27,731.15 appeared to be consistent with a holiday in Barbados.

Allegation 2.3 against the Third Respondent

66. Mr PR had owned a collection of high-value motorcars some of which were stored in Unit 3 Landerry Industrial estate. The Third Respondent offered Mr TR the use of Unit 4 and explained to him that it was leased by the Firm but not used to full capacity. Mr TR said that the Third Respondent did not tell him that the estate would be charged rent to be passed on directly to the landlords. During the period 23 July 2009 to 18 February 2011 the estate was charged £15,135.47;

67. Mr TR instructed the Firm in connection with the sale of Mr PR's former home for which the estate was to be charged £660 including VAT. The Firm actually charged £1500, an increase of £840;

68. There was a charge to the estate of £14,082.89 for gardening services at Mr PR's former home, yet gardening was the responsibility of the tenants.

Allegation 1.4 against the First Respondent

69. On 13 June 2011 the intervention agent forwarded a fax from the Third Respondent to the SRA. This fax included two letters sent to the First Respondent by Mr RF, his reporting accountant. A letter dated 7 May 2009 from Mr RF to the First Respondent set out the background to the banking crisis and recorded the First Respondent's apparent concern for client money in 2007 following the initial crisis. Mr RF said that:

> "I appreciate that due to the lack of guidance you sought to lodge monies in as safe a place as possible and in good faith did this. The rules are that these monies have to be lodged with banks or building societies in England and Wales."

He also said:

> "You sought to erode your personal exposure by maintaining funds in trust and drew on the Clients' Account"

70. Mr RF told the Respondent that before he would sign off the client account certificate he required confirmation that the sum of £339,790.99 was being held on the First Respondent's behalf as at the 30 November 2008 and that this sum would be remitted to his client account and would be lodged by 21 June 2009.

71. The First Respondent wrote to Mr George White on 12 May 2009 asking if he would be interested in investing in the Firm. Mr George White provided a loan of £300,000, received into client account on 13 July 2009.

72. Mr RF signed and submitted the accountants report on 27 May 2009. On 29 June 2009 Mr RF sent the First Respondent an email asking him:

> "Have the deposit monies come in please?"

The response was also by email

> "Thai bank wants forms signed by both father and I in view of the amount. Has to be the same form! So it has had to come to UK and then to Aus. Now signed and on its way to bank. The funds should now come in by end of next week".

73. The only credit entry into the client bank account during the period 30 June 2009 to 13 July 2009 was the payment from Mr George White of £300,000 on 13 July.

74. Mr RF's file note of 22 February 2011 recorded that Mr RF had been led to believe by the First Respondent that the money had come in as he had requested. Another file note by Mr RF also dated 22 February 2011 recorded that the First Respondent had admitted that the undertaking given to him concerning the money coming from his father was incorrect and that it had in fact come from a loan provided by a client. Mr RF committed suicide on 6 March 2011 and cited the problems he faced arising out of the Firm in his suicide note.

Allegation 1.5 against the First Respondent

75. The First Respondent provided Mr Whitmarsh with a copy of his application for professional indemnity insurance for the practice year 2010/2011. The Respondent signed the application. One of the questions was:

> "has the Firm or any prior practice or any present or former principals partners members directors consultants and employees thereof (a) been the subject of an OSS/CCS/LCS investigation that has been upheld, or any investigation or intervention by any regulatory department of the Solicitors Regulation Authority or any other recognised body?"

The First Respondent answered that question "No".

76. The Firm had been the subject of a forensic investigation resulting in a Report dated 5 October 2006 and an adjudication dated 18 February 2008.

Allegation 2.5 against the Third Respondent

77. The SRA wrote to the Third Respondent by letter dated 8 November 2011 and sent her a copy of the Second Report and the allegations of misconduct, in order to obtain her comments. The SRA wrote to her again on 19 December 2011 and there was no response or explanation.

Allegation 1.6 against the First Respondent

78. The First Respondent informed Mr Whitmarsh that he jointly owned the business of CK solicitors with the Third Respondent, a FILEX. The Firm applied for formal recognition of the partnership but the application was not successful.

79. On 9 February 2011 the SRA had written to the First Respondent to inform him that he must not practice as a partnership but he continued to do so.

Allegation 1.7 against the First Respondent

80. The First Respondent was unable to explain the transfers from client to office account accompanied by the narratives "CK Office monies owed to client" and "Capital Monies owed to client". There was an absence of effective management of the Firm as a whole to ensure supervision and compliance with the Accounts Rules and the First Respondent admitted as much in his response to the forensic investigation report dated 3 November 2011 when he said that he had accepted that his level of trust in the Third Respondent meant that he did not supervise her as closely as he would have an employee.

81. The First Respondent had no effective management structure in place to ensure that he complied with his obligations to practice only as authorised by the SRA. He continued to practice in partnership after the Authority notified him that he must not do so and he permitted the Third Respondent to run her separate business through the Firm. The First Respondent had an obligation to properly supervise the work of the Third Respondent in addition to his supervisory obligations in relation to the Accounts Rules.

Witnesses

82. The following witnesses gave sworn oral evidence:

- Mr Cary Whitmarsh, the investigation officer of the SRA;
- Ms Susan Dryden;
- Mr George White;
- Ms Jacqueline Heath;
- Ms Gillian Lawrence;
- Ms Coral Armistead;
- The Third Respondent, Ms Emma Coates.

The Submissions of the Applicant

83. Mr Barton told the Tribunal that the gravamen of the allegations was that there had been a substantial raid on client account over a protracted period. The forensic investigation had focused on activities from 13 July 2009 to 31 December 2010, a period of 18 months. It could be seen from the two forensic investigation reports in the Applicant's exhibit bundles that over £500,000 of client money had been withdrawn from client account. This was a clear breach of Rule 22 of the Solicitors Accounts Rules.

84. There was a distinction between the Respondents in this case. The First Respondent was a solicitor and the Solicitors Accounts Rules imposed professional obligations upon him. The Third Respondent was a member of the ILEX who still had a company

called Coates & Co in Selsey. The First Respondent had not been employed since his Firm had been intervened into by the SRA. One striking feature of the case was the absence of any explanation for the disappearance of the client monies, apart from the Respondents blaming each other. In Mr Barton's submission this was a completely misguided attitude to take to the proceedings.

85. The allegations against the Third Respondent concerning the operation of the Firm's accounts were correct, as the two Respondents had been joint signatories on those accounts. Paragraph 10 of the First Report dealt with the Firm's bank accounts and whilst the Third Respondent may say that she was not a solicitor, she had chosen to be a signatory and she therefore carried the consequences of the improper management of the accounts in the same way as the First Respondent.

86. From the First Report it could be seen that a minimum cash shortage of £126,516.19 had been identified by Mr Whitmarsh. At the end of 2008, before the computer system at the Firm had "crashed", there had been a shortfall of some £240,000. There were two ledger accounts, 2-009 and 2-001 in the name of the Third Respondent. It could be seen from page 23 of DEB/1 that the ledger account 2-001 had been set up to deal with a claim against the Third Respondent's former employers but the money from Mr George White had been deposited in it on 13 July 2009. It was the Applicant's position that that money had been obtained to plug the shortfall in client account. The ledger itself showed £300,000 as being "White on account of costs". This money however was not on account of costs. On the same day it was transferred to ledger 2-009, which in Mr Barton's submission was a suspense ledger used as a bank account.

87. Once the money had been credited it appeared to put ledger 2-009 into credit but the credit shown did not give the correct position. Mr Whitmarsh had reconstructed the ledger and put it into chronological order. When the sum of £300,000 was credited to the ledger that ledger was already overdrawn by some £70,000. Between 13 July 2009 and 31 December 2010 that ledger was drawn against and posted to. Mr Barton said that this involved the improper maintenance of a suspense ledger which by its very nature should be temporary and for money which could not be properly allocated. The operation of this ledger was completely improper. It could be seen from paragraph 21 of the First Report that in the 18 month period some £524,720.69 had been withdrawn from the client ledger and an analysis showed how the withdrawals were categorised. Paragraph 22 indicated that the funds withdrawn from client account in the category "on account of costs" were round sums that would not be allocated to a particular client matter. The debit balance on the face of ledger 2-009 as at 31 January 2011 was £39,155.41. Neither of the Respondents had offered any explanation to account for the cash shortage and in Mr Barton's submission the case of Mohammed Iqbal v The Solicitors Regulation Authority [2012] EWHC 23251 (Admin.) was good authority that a solicitor should be expected to offer an explanation in these circumstances and Mr Barton included the Third Respondent in that assertion.

88. There had been a Second Report which had come about following a letter written by the First Respondent to Mr Whitmarsh at the SRA dated 4 May 2011. Mr Whitmarsh had been presented with information that the circumstances needed to be looked at closely. At paragraph 3 on page 82 of DEB/1 it could be seen that it was said in that letter by the First Respondent that "The shortfall arises from sums transferred from

client account to office account being in excess of the funds deposited in Accounts 2-001 and 2-009.". Referring to the assertion that he had put a sum in excess of £300,000 into the practice, the First Respondent said that "the funds were paid into client account to ensure that any deficit created by [former partners] was covered.". In Mr Barton's submission there was no suggestion that former partners were responsible for the £240,000 pre-crash shortage on client account so paragraph 5 of the First Respondent's letter must be wrong and he also submitted that neither was it correct to say, as the First Respondent had, that "In the main these are transfers of capital required to meet outgoings on Office Account. Some entries were global sums transferred in respect of costs on a number of files and the sums were subsequently allocated to the correct files." At paragraph 7 of that letter the First Respondent said that:

> "We had made a decision that we would need to rebuild the missing postings following the computer crash. I wanted to wait until we were comfortable that we could allocate sums to the correct clients. I carried out this work during January 2011 as part of the year end process as I had agreed with our accountant that our accounts of 2009/10 should be produced earlier than had occurred in the past. I had planned to do this work in February 2011. However I brought this forward as I was becoming concerned that we may have used up all our working capital. Further I was aware of the SRA monitoring visit arranged for later that month."

Mr Barton told the Tribunal that it would hear from Susan Dryden of the efforts made by the First Respondent to cover up some of the tracks of what had occurred. In paragraph 12 (c) of his letter, the First Respondent had said that his checking of the debit balances on a regular basis became impossible following the computer crash. The Applicant said that such checking was not impossible.

89. In the Second Report reference was made at page 10 to the introduction of the £300,000. The Tribunal would hear from Mr Whitmarsh that he had concluded that this was office money. It was, in Mr Barton's submission, plainly office money and had been treated as office money. If neither of the Respondents were found to be dishonest by the Tribunal it was still open to the Tribunal to find that they had been reckless. If the Third Respondent had not known that the ledger was overdrawn then she should have known. Even if she thought the personal payments were authorised then she still had an obligation to check that she was not drawing on client money. Her position was misguided. There had been a significant period of free withdrawal of client money as and when needed.

90. Mr Barton said that the First Respondent had told his reporting accountant untruths concerning the sending of money abroad. Jacqueline Heath would say that she heard the First Respondent say to Mr RF that he had sent money abroad and the emails from Mr RF to the First Respondent were consistent with that explanation. In fact, no money had been sent abroad and that was an untruth told to Mr RF. Mr RF was then told that the monies had been returned from abroad and that was a second untruth, as the monies had actually come from Mr George White. Mr Barton said that this was deliberate and dishonest behaviour on the part of the First Respondent.

91. The Second Report illustrated that some £526,609.23 had been improperly withdrawn from client bank account, which was represented by 57 withdrawals between 13 July 2009 and 8 February 2010 totalling £224,066.23 and 82 withdrawals between 8 February 2010 and 31 December 2010 totalling £302,543. Paragraph 72 showed the position at 31 December 2010 when there was an overdraft on the client ledger account of £301,771.45. In Mr Barton's submission the use of money after 8 February 2010 was the use of client money. If the Respondents had not known that client money was being taken then they should have known and they were at best grossly reckless.

92. Mr Barton said that in his submission the withdrawal from Mr K's client account of £4,825 was an isolated example of downright dishonesty on the part of the Third Respondent. Jacqueline Lawrence would deal with this aspect in her evidence.

93. In regard to Mr PR deceased, paragraph 108 to 111 of the Second Report illustrated what had occurred. In interview the Third Respondent had said that the payments related to a holiday and that the First Respondent was fully aware of it. If the First Respondent was aware then he was involved in that dishonesty but it did not therefore follow that the Third Respondent had not been dishonest. Similarly when the Third Respondent had told Mr Whitmarsh in interview that she had not reviewed the file relating to Mr K before transferring the sum of £4,825 from client to office bank account on 10 March 2011, she had been at best reckless.

94. In the matter of Mr PR's estate, three transfers had been made from client to office bank account said to be in respect of bills. Those bills contained identical wording. This was in Mr Barton's submission a direct raid on the estate and the Third Respondent had admitted that the payments from office bank account had been used for a holiday for her and for staff. This statement had not been challenged since she had made it.

95. In summary, Mr Barton said that the Third Respondent had committed the breaches alleged. In relation to allegation 2.1, she had been a signatory to the account and as such had responsibility. She did hold money other than client money in client account. She did withdraw that money in breach of Rule 22 of the Solicitors Accounts Rules. Mr George White's money had been used to plug the deficit that had existed before the computer crash; that money was always office money. In relation to allegation 2.2.1, the sum had been withdrawn. Her name had been on the notepaper as a joint principal (unapproved) and she was the joint signatory on the account. She therefore carried responsibility. In respect of allegation 2.2.2, the sums had been withdrawn; she had withdrawn them and it was from client money. She had been dishonest or reckless at best. In relation to allegation 2.2.3, she had authorised the transfer of £4,825 from the ledger of Mr K to office account. In respect of allegation 2.2.4, she did withdraw money and it was for a holiday for her and others, as she herself had said. If she said it was less than the amount specified that didn't assist her. In relation to allegation 2.3, she had charged the estate of PR deceased with monies that should not have been charged. It was a fact that she had maintained a suspense client ledger account and that suspense client ledger account could not be justified on any of the usual bases. It was similarly a fact that she had not co-operated with the SRA and it was only today that she had first indicated her attitude to the allegations.

96. The Applicant's position concerning the First Respondent was identical to the position it adopted on the Third Respondent but he did face discrete allegations of lying to his reporting accountant, the provision of false information on a professional indemnity insurance form, which he admitted, and practising in partnership. The First Respondent also denied that there had been a failure in management at the Firm and yet he had presided over all of the withdrawals that the Tribunal had heard about. On any view he had paid perilously little attention to what was going on. He accepted that he had not checked the bank reconciliations. It had been a small Firm with two signatories on the bank account and yet in Mr Barton's submission the First Respondent had simply not known what was going on. If he didn't know then he fell foul of Rule 5.01 of the Solicitors Code of Conduct.

The evidence of Cary Whitmarsh

97. Mr Whitmarsh confirmed that he was an investigation officer with the SRA and had worked for the organisation for 10 years. He confirmed that he had prepared a 10 page report on the Firm dated 31 March 2011. That report was true to the best of his knowledge and belief. He had conducted a review of the client account and concluded that there was a minimum cash shortage of £126,516.19. At that stage he was unable to take his investigation beyond the fact that there was a mix of office and client money in ledger account 2-009. Mr Whitmarsh also confirmed that the Second Report was true to the best of his knowledge and belief with one error in paragraph 11, the first sentence of which should have read "her husband attended a meeting with Miss Coates".

98. Mr Whitmarsh said that a suspense ledger was one where funds were received if they could not be properly allocated. Once they could be allocated then they should be transferred to the appropriate client ledger. The suspense ledger thus showed the liabilities even if the monies could not be allocated. There was an obligation on the solicitor to ascertain where the money belonged and to post it to the correct ledger.

99. On ledger 2-009 Mr Whitmarsh had found that there were multiple transactions which had not been allocated to individual clients. He had been able to identify that the Respondents were both signatories to the client account. The First Respondent had told him that he was the principal in a partnership with the Third Respondent.

100. Mr Whitmarsh said that he had identified the cause of the cash shortage and paragraph 21 of the First Report detailed a number of transactions made between 13 July 2009 and 31 December 2010 on client ledger account 2-009. These entries were marked as "on account of costs" and were always round figure sums. The figure of £9,995 was an exception. The First Respondent had been unable to offer any explanation; he had said that he would have to think about it. The First Respondent had thereafter written to Mr Whitmarsh and Mr Whitmarsh had commenced a second investigation and interviewed both of the Respondents to obtain explanations. He had interviewed the Third Respondent on 25 May 2011 and the First Respondent a week earlier. Those interviews had been recorded.

101. The reporting accountant for the Firm, Mr RF, had died on 6 March 2011. Mr Whitmarsh had spoken to Mrs RF and she had subsequently provided a statement.

102. Mr Whitmarsh had examined the client ledger balances and had noticed that there were two ledgers in the name of the Third Respondent. He had examined these ledgers. Ledger 2–001 showed the receipt of £300,000 on 13 July 2009 which had been transferred on the same date to ledger 2–009, the suspense ledger. Mr Whitmarsh said that much would depend on how long the Firm had been open in assessing whether it was normal for a Firm to maintain such a ledger. However, it was not normal here as amounts posted to a suspense account should be transferred in a few days to the allocated account. It could be seen on the ledger that most entries were withdrawals. The only credit was that for £300,000 paid in on 13 July 2009. The entries appeared to be a mix of transactions described as "on account of costs" and "monies owed to client". The First Respondent had told him that codes were pre-loaded onto the computer system and the computer automatically generated these allocations. The First Respondent told him that the entries marked "on account of costs" could be allocated but not all of them. He could not explain the entries marked "monies owed to client" or monies that had been paid to the Third Respondent.

103. Mr Whitmarsh told the Tribunal that there was a debit balance of £77,050.76 on the ledger before the payment in of the credit of £300,000, being the loan from Mr White. Withdrawals made up to 31 December 2010 then had the effect of making the client account overdrawn by some £500,000.

104. Following the receipt of the £300,000, the ledger had gone into a debit balance again from early February 2010 until 31 December 2010 and the debit entries which had increased the debit balance to £301,771.45 could be seen at paragraph 71 of the Second Report.

105. The Third Respondent had had conduct of the matter of Mr PR's estate. The client ledger account in respect of Mr PR deceased showed three transfers from client to office bank account said to be in respect of bills. The total sum of £7,500 was moved from client to office between 23 April 2010 and 22 May 2010. The Third Respondent had told him that she had used those monies for a holiday for herself and named staff and that the First Respondent was fully aware that she had done so; the office account showed payments of £12,800 for flights, £7,090.13 and £3,816.52 for accommodation and £174 for a taxi to the airport. There was also a payment of £3,847.50 to Arasys Ltd. These payments totalled £27,731.15. In Mr Whitmarsh's opinion, the Third Respondent had not considered whether the office account was able to withstand these payments.

106. Paragraphs 112 to 115 of the Second Report showed payments from client ledger account on the estate of Mr PR deceased in the sum of £15,135.47. Mr Whitmarsh said he had only gained a full understanding of what had occurred after he had interviewed the Third Respondent. He had taken a statement from Mr TR in September 2011. Mr PR had cars stored in Petersfield and Selsey and Mr TR had told Mr Whitmarsh that when the Third Respondent had offered the use of Unit 4 he had regarded this as a gesture of goodwill for which there would be no charge.

107. In the period before his death, Mr PR had moved to the Cook Islands and had let his home in Selsey for 12 months on a tenancy agreement; that agreement had specified that the tenants were to maintain the garden. However a sum of £14,082.89 had been charged against the estate by the Third Respondent for gardening services.

108. When all the amounts were added together on the estate of Mr PR the total sum improperly charged to the estate by the Third Respondent was £67,558.36 and the money had gone from client account to the service providers.

109. In cross-examination by Mr Egleton, Mr Whitmarsh was asked whether the first forensic investigation had been a matter of routine. Mr Whitmarsh responded that he could not remember whether it had been with notice but if it had been notice would have been given a week beforehand. The background was that the SRA had conducted a practice standards visit during which a member of staff had expressed concerns about another member of staff who had misled clients. Mr Whitmarsh was asked whether the First Respondent had known about this and he responded that the matter of who had complained was not raised and the SRA would not normally reveal it.

110. The first meeting held on 8 March 2011 was with the First Respondent and Mr Whitmarsh confirmed that he had not mentioned Mr George White's loan or any shortfall during that meeting. At the meeting on 10 March 2011, when Mr Whitmarsh had met again with the First Respondent and explained about the shortage that he had discovered on client account and made arrangements to send the First Report to him, the First Respondent had not expressed surprise concerning the shortage and indicated that that was about what he had calculated. Mr Whitmarsh said he was surprised and disappointed that the First Respondent had not volunteered the information earlier.

111. Mr Whitmarsh confirmed that pages 11-21 of DEB/1 showed the original 2-009 ledger and his reconstruction which showed a running balance was at pages 132 to 135. Mr Whitmarsh said that anyone looking at that ledger would realise that there was a deficit.

112. Mr Whitmarsh said that he had not been in the position to ascertain who had authorised the transfers from December 2008 as the Firm had not been operating primary source documents before Coral Armistead had arrived. The system appeared to have been that the fee earner would give a note to the accounts department and/or the Respondents and they would authorise the transfer. The documents were not retained. It was put to Mr Whitmarsh by Mr Egleton that the copy of ledger 2–009 at page 21 of DEB1 showed that various amounts had been credited to that ledger so that it appeared that the deficit was not as great as it actually was and that this might suggest that someone knew that the ledger would be examined. Mr Whitmarsh agreed that it was reasonable to assume that that the credits had been made to disguise a shortfall. He had however not undertaken an analysis to ascertain to what those monies related. Mr Egleton said that if some £524,000 had been spent between July 2009 and December 2010 and £300,000 had come from Mr White, £224,000 must have come from other sources and other clients must have suffered loss. Mr Whitmarsh responded that he was aware that others had suffered loss but the monies had not been allocated to individual client matters.

113. Mr Egleton asked Mr Whitmarsh about the PII form completed by the First Respondent and reminded him that the First Respondent had told Mr Whitmarsh that he had forgotten about an adjudication less than 2 years previously. He asked Mr Whitmarsh whether he had found the First Respondent's memory poor and Mr Whitmarsh replied that he had found it to be selective rather than poor.

114. Mr Whitmarsh confirmed that he had obtained the bank mandates to show that both of the Respondents were signatories on the accounts but that he could not recall the start dates of those mandates.

115. Mr Whitmarsh said that he had obtained information about Mr White's loan during his second visit, which had come about as a result of the First Respondent's letter to the SRA. He had not at that stage spoken to Mr White but had obtained the information from the Respondents.

116. Mr RF had died on 6 March 2011 and the Third Respondent had telephoned Mr Whitmarsh to inform him. Mr Whitmarsh had subsequently contacted Mr RF's widow. Mr Egleton asked Mr Whitmarsh whether he had been able to establish how Mr RF had discovered the deficit of some £339,000 in client account. He replied that he had not been able to do so but that Mrs RF had said that Mr RF had told the First Respondent to replace the monies and that the First Respondent had told Mr RF that the monies had been sent off-shore to protect them from the banking collapse. Mr Whitmarsh had never been able to identify where those monies were and there was no evidence that they had been sent abroad. Mr Whitmarsh had concluded that it was not true that the monies had been sent abroad and that the First Respondent's statement that they had been was not true.

117. When asked by Mr Egleton whether the First Respondent had volunteered that the £300,000 from Mr White was to cover the deficit Mr Whitmarsh replied that the First Respondent had not told him that and in any event there would have been another £39,000 of deficit to cover. The First Respondent had explained that Mr White's loan was for capital to be invested into practice. It was put to Mr Whitmarsh that there was no reason to think that the First Respondent disbelieved Mr RF when he said there was a deficit of £339,000 in client account and consequently the loan from Mr White could never have been working capital, Mr Whitmarsh replied that without the working papers it was impossible to say. He could say that the First Respondent was not surprised that the monies had been taken out with the description "on account of costs" as he had told Mr Whitmarsh that the software automatically generated certain codes. He had however accepted that the description might not be accurate. In Mr Whitmarsh's opinion it was impossible to say to whom these costs related, the money had been transferred into office account and then spent.

118. Mr Egleton asked Mr Whitmarsh about the parts of the Second Report that referred to the status of the Firm and the Third Respondent's alleged failure to deal with the SRA in an open prompt and cooperative way. Mr Whitmarsh said that at the initial interview with the Respondents he had been told that the Firm was co-owned by them and he had asked about its status as a Legal Disciplinary Practice; the First Respondent had said that the Third Respondent was organising the application and vice versa, it had been difficult to obtain information and its status had not been clearly explained by either the Respondents.

119. Mr Whitmarsh confirmed that he had been unable to say who had authorised the transfers shown in paragraph 62 of the Second Report and that it had could have been either of the Respondents. However, the four payments shown at paragraph 65 of that Report were specific to the Third Respondent.

120. In regard to the allegation of improper withdrawal from client bank account regarding Mr K, Mr Whitmarsh was asked whether the basis for the allegation was because Mr K had said so. He responded that it was not because Mr K had said so but rather that no bill of costs had been delivered to Mr K, who was a client of Mr SH. There had been no invoices to Mr K from Mr SH found by Mr Whitmarsh, only those prepared by Gillian Lawrence for the Third Respondent. Mr Whitmarsh had not spoken to Mr K. Mr Egleton put Exhibits EC/2, EC/3 EC/4 and EC/5 into evidence and said it would be the Third Respondent's position that work to the value of £4,000 plus VAT had been carried out by the Firm in the matter if Mr K.

121. Mr Egleton also asked Mr Whitmarsh whether he had spoken to Mr TR concerning the bills at paragraph 109 of the Second Report and he confirmed that he had done so and Mr TR told him that he had received no bills from the Firm. However, he had also told him that he did expect to pay some bills. It was put to Mr Whitmarsh that in interview the Third Respondent had said that a total fee of £35,000 had been agreed between Mr TR and the First Respondent. Mr Whitmarsh said that he was unable to recall that and that Mr TR was permanently resident in Oslo.

122. Mr Whitmarsh was unable to say why the entry relating to "Arasys Limited" at paragraph 110 of the Second Report had been allocated to a holiday in Barbados.

123. Mr Whitmarsh was asked by Mr Egleton concerning accommodation for Mr PR's cars and whether the allegation was that the charges were not justified because Mr TR had thought that the accommodation was being offered free of charge. He responded that it was; there was no dispute on quantum of the charge, the position was that no charge should have been made as Mr TR was under the impression that use of Unit 4 was a gesture of goodwill by the Firm.

124. Insofar as the sale of 8 Grove Road was concerned it was put to Mr Whitmarsh that the invoice concerning the matter was not limited to conveyancing, which had been quoted at £660 plus VAT, and included the provision of other services. It was said by Mr Egleton that the Third Respondent's case had been set out in her interview and Mr Whitmarsh agreed that she had not refused to answer any questions.

125. In re-examination by Mr Barton concerning the documents now introduced by the Third Respondent, Mr Whitmarsh confirmed that he had seen the ledger relating to Mr K before and the fee earner appeared to be Mr SH. Mr Whitmarsh had also seen the invoice for £4,825 before; Mr SH had telephoned him and alleged an improper transfer by the Third Respondent and told him that another employee wished to make a statement. He had met with Mr SH and Gillian Lawrence and Gillian Lawrence dealt with the matter of the alleged "dummy bill' in her statement. He had not spoken to Mr SH during his investigation but had been contacted by him before completion of the Second Report.

<u>The Evidence of Ms Susan Dryden</u>

126. Ms Dryden said that she was a partner in Blake Lapthorn which had been appointed as the intervention agent at the Firm. She had made four statements in the proceedings, dated 8 January 2013, 18 February 2013, 28 February 2013 and 28 February 2013 which were all true to the best of her knowledge and belief.

127. In her second witness statement she had said that she had taken possession of client matter files and monies; in questioning from Mr Barton she confirmed that she had in fact taken possession of anything to do with clients. A list of the accounts papers uplifted was at pages 1 to 4 of the exhibit to that statement and showed the totality of the accounting documents.

128. Ms Dryden confirmed that a computer crash had occurred at the Firm on 1 December 2008 and she had reconstructed the balances at that date, which showed overdrawn ledgers of some £142,000 and unaccounted drawings of some £240,000. There was no electronic data to rely upon so she and her team had used hard copies of the ledgers. The reason she had rebuilt the ledgers was because she was not satisfied as to the accuracy of the existing ledgers. Monies had been transferred from client to office account when they should not have been; as an example she cited the account of Mr "T", where a transfer from client account in the sum of £131,757.46 had been effected. A claim was received in respect of this money which had been verified and paid by the Compensation Fund.

129. Ms Dryden said that she had tried to identify the shortfall on client account and had found that it had been caused by transfers from client account to office account which were not allocated to a ledger. She said that she was aware that Sally Kenny had introduced a loan to the Firm prior to the computer crash and that salaries were being paid from client account. She confirmed that as shown in her statement, the position was that a shortfall existed prior to 1 December 2008 in, at the least, the sum of £383,125.55. She confirmed that a separate printed sheet was attached to the front of each reconciliation document between October 2007 up to and including November 2008 and at page 121 of the exhibit appended to her second statement was one such document which showed monies withdrawn from client account not posted to a ledger which totalled some £52,149.97. The document entitled "transfers from client to office account", at page 143 of that exhibit, which covered the period from August 2007 to 21 December 2007 showed other transfers from client account to office account totalling £52,500 which transfers had not been allocated to a ledger. She believed that the annotation "£48,000" next to the entry on 27 September 2007 was the First Respondent's.

130. In questioning by Mr Egleton, Ms Dryden was asked about the position of Mr SH in the Firm. She said that this had been dealt with in her original attendance note appended to her first witness statement. Mr SH had told one of her employees that he was not employee but a fraud investigator specialising in insolvency. In interview, the First Respondent had confirmed that Mr SH was not an employee but occasionally referred matters to the Firm. Mr SH himself said that he had been helping the First Respondent to investigate the shortfall in client account and had given Mr Whitmarsh of the SRA a schedule. That schedule was not given to the intervention agents. Mr SH had a room at the Firm's offices and had remained in that room after the First Respondent had left. He had told the intervention agents there were no client files in his room and she had asked him to place a note on the door identifying the room as his; he had done so.

131. Ms Dryden confirmed that a substantial amount of work, carried out over several months, had been involved in trying to reconstruct the ledgers. She was unable to say whether the computer crash was natural or deliberate. It could be seen from her

statement that the intervention agents had known at the time of the intervention that there was a shortfall and from the monthly reconciliations each month it could be seen that the shortfall was increasing.

132. Mr Egleton asked Ms Dryden about a line in appendix 7 to her first statement, which were conversation notes between one of the staff of the intervention agents and Ms Heath, the bookkeeper at the Firm, which said that "Transfers of funds between accounts were done by Simon Kenny – she just processed slips left in her tray and matched them against the statement. She didn't question them." She agreed that this was what had been said but referred to page 161 of the exhibit to the Second statement were 3 entries were shown in what she believed to be the Third Respondent's handwriting.

133. Mr Egleton also asked Ms Dryden whether she had been aware of Mr RF's investigation into the cause of the client account shortfall. She replied that she had become aware of his death and that he was the reporting accountant for the Firm but she had had no knowledge of what he was investigating. She had however seen some emails and had passed them on to the intervention team. It had not been her area of investigation but she had dealt with whether monies had been transferred to a foreign bank account in her second statement; she had investigated and could find none. She was also asked by Mr Egleton about paragraph 24 of her second statement and confirmed that the intervention team had found one particular Blue Sheet with handwriting on it which she believed to be the First Respondent's which appeared to be an instruction to Ms Heath to "correct" various client ledgers by transferring balances from the eight identified ledgers to ledger 2–009. A Post It note had been attached to the blue sheet on which Ms Heath had written "Brenda, DO NOT ENTER ON PC LAW". However the transfers were processed and made and so either Ms Heath's instruction was ignored or someone else made the transfers. She confirmed that page 113 of DEB1, the last page of ledger 2-009 printed on 8 March 2011, it could be seen that the effect of the transfers was that ledger 2–009 had a deficit of £39,155.41 on 8 March 2011 and she agreed that it seemed reasonable to deduce that an attempt had been made to cover up the deficit.

134. Ms Dryden confirmed that in the matter of Mr T the sum of £131,727.46 had been debited from the ledger of Mr T on 18 January 2011 and credited to ledger 2 – 009 on the same day. The audit trail identified the person logged into the computer as the First Respondent and there was a further attempt to manipulate the log to show that the transaction was being affected by Ms Heath. When asked by Mr Egleton whether it was reasonable to assume that the First Respondent was disguising the deficit, Ms Dryden responded that this was a matter for the Tribunal to decide, although there could be no other reasonable explanation since there was no reason why Mr T's money should go into ledger 2-009.

<u>The Evidence of Mr George White</u>

135. Mr White confirmed that his statement dated 28 February 2013 was true to the best of his knowledge and belief. He said that he had been approached by the First Respondent and invited to consider investment in the Firm in the sum of £300,000 and this he had done. His monies had not been returned to him and he had issued proceedings against the Firm and against both of the Respondents.

136. Mr White was asked by Mr Egleton whether it was true that he had obtained summary judgement against the First Respondent the previous week. Mr White said that he believed that this was true but he had received nothing in writing to date. The letter to him from the First Respondent dated 12 May 2009 had come out of the blue, although he had been friendly with the First Respondent before the letter had been received. It was a business proposition and Mr White understood that the main reason for the Firm seeking funds was to expand and take on two additional partners. As an exhibit to his statement could be seen a letter dated 14 May 2009 from the First Respondent stating that he expected the fee income to double over the following period of 12 months and offering security of the office premises and two premises belonging to the Third Respondent against the £300,000 to be loaned by Mr White to the Firm.

137. Mr White said that he had trusted the First Respondent, had not obtained independent legal advice and did not know that it was a legal obligation for the First Respondent to oblige him to do so. Had he known of the bad situation of the Firm and the substantial deficit in the accounts he would not have lent the money. No security had been offered by the First Respondent himself. Mr White said that he had sent a cheque for £300,000 with a letter to the First Respondent asking that the loan monies be credited "to client account pending final agreement." He had wanted the money to be placed in client account as he believed that the Law Society guaranteed client account. There had been no strings attached to the loan and the First Respondent had told him that a bank loan of £40,000 would be paid off the property "Clock House" and £25,000 would be paid off a debit balance in client account; the remainder of the monies could be used to expand the business. The monies were due to be repaid on 29 December 2011 and the securities were listed in the First Respondent's letter to him dated 24 July 2009. He eventually became concerned over the amount of time it took to get the charge registered against "Ivy House", some 9 months, and the charge against "Clock House" was not registered at all before 29 December 2011. Mr White confirmed that he had written the letter to the First Respondent dated 30 July 2009 which contained proposals as to the loan. He also confirmed that he had sent an email dated 25 January 2010 concerning the outstanding charges and had followed that email up with a letter dated 5 February 2010.

138. Mr White was asked by Mr Egleton whether he had had any contacts with Mr SH and he replied that he had and that he understood that he was a friend of the First Respondent. Mr SH had encouraged him to pursue the Third Respondent into bankruptcy which he had declined to do. He had seen Mr SH was on several occasions at court and he seemed to be acting as a solicitor for the First Respondent against the Third Respondent. He had had communications with the Third Respondent by telephone and email.

139. In questioning from the Tribunal Mr White confirmed that his statement had been given as part of a police investigation but he had not reported the matter to the police.

<u>Evidence of Ms Jacqueline Heath</u>

140. Ms Heath confirmed that her statement dated 19 February 2013 was true to the best of her knowledge and belief and said that her statement to the Sussex Police was now also dated and signed.

141. She said that she had become aware of a shortfall on client account which had all started with a loan of £50,000 from Sally Kenny, when more monies had been moved from client account to office account than should have been and she had mentioned her concerns to Mr RF. She was unaware that the deficit on client account was some £339,000 and would not have known of the extent of the deficit without looking at the paperwork.

142. The First Respondent had told her that he had sent money abroad to protect it from the banking collapse; however on reflection she could not remember any such monies going out but at the time she had believed him. The impression that he had given her was that the whole of the deficit was attributable to the money being moved abroad. She had heard Mr RF question the First Respondent on the matter and Mr RF had chased for the return the monies.

143. She had not been told by the First Respondent that he was borrowing money from Mr White and had assumed that the monies were coming back from abroad, however, she saw Mr White's cheque coming through on the bank account. At page 35 of the exhibit to her statement was an email from Mr RF dated 13 July 2009 in which it was said that the First Respondent had "called to say the funds from deposit had arrived". She had looked on the SRA's website and had seen that no client monies should have been sent abroad as those monies should be held in England and Wales. She had believed the First Respondent at the time when he had said that the delay in the return of the monies was being caused by having to send the same form backwards and forwards.

144. She recalled that the Third Respondent had told Mr RF that the monies were a loan and not monies coming back from abroad. She had been given a copy of an email dated 22 May 2009 by the Third Respondent, which was an email from the First Respondent to the bank mentioning a private investor and the terms and conditions of the investment. In that email the First Respondent had also said that he was expecting to receive £35,000 from fees in the estate of Mr PR.

145. Mr Egleton asked Ms Heath about the Post-It note on the Blue Sheet in which she had asked Brenda not to enter the amounts on PC Law. She said that she had wanted to make sure that these amounts were not posted until she had spoken to the First Respondent. She herself had not posted the amounts on the Blue Sheet onto the computer and it could be seen that it did not have her annotation upon it. She had been concerned about the transfers from client accounts and the amounts that were going to ledger 2-009. The amounts were in the First Respondent's handwriting and she had understood that ledger 2–009 was a miscellaneous ledger not attributable to clients, for instance the loan from Sally Kenny had gone to ledger 2-009 and then to office account.

146. Mr Egleton asked Ms Heath about the writing on the Blue Sheet shown at page 54 of the exhibit to her witness statement and she said that the writing was a mixture of hers and the Third Respondent's. She had checked the purpose of the transfers and had put in explanatory notes, for instance the note "6001–79" indicated rental for the office premises due to the Third Respondent.

147. Mr Egleton asked Ms Heath about the bank statement and handwritten note at exhibit EC/6. She had been aware that the Third Respondent and some of the staff had gone to Barbados and the note indicated that some of the amount shown for flights should be apportioned to the Third Respondent; she had put this amount against the Third Respondent's drawings. Mr RF had said it was in order to apportion certain amounts to the Third Respondent's drawings, for instance the holiday cottage business expenditure.

148. Ms Heath said that the computer crash had actually occurred in February 2009 but as the financial accounts had been prepared to 30 November 2008 the decision was taken to rewind the accounts to 1 December 2008. When the computer had crashed a technician from PC Law had prepared a printout to the year end and she had gone through the figures and re-entered them ensuring that nothing was duplicated. She had been aware of a deficit prior to the crash but had thought that dated back to the time of the Sally Kenny loan and could be sorted out.

149. In January 2011 there was an SRA inspection and the staff knew that this was going to happen. She was aware at that time that the First Respondent spent time moving money to the 2-009 client ledger account and he told her that he had done it so he could print off a list of client balances for the SRA. However, she was aware that the Third Respondent had known nothing about this and in any event it did not make sense to her.

150. Matters had come to a head at the beginning of 2011 and Ms Heath was not sure whether that had been before or after the SRA inspection. She was present when the First Respondent and Mr SH had suggested that the deficit was all the fault of the Third Respondent; they had printed out a list of her drawings. They had however not compared that list with the monies that the Third Respondent had put into the Firm.

151. Ms Heath confirmed that the Firm's credit card balances were paid off every month and cash was taken out on them to pay staff and students as the petty cash never had much money in it. Ms Heath was also aware that rent was not paid regularly by the Firm to the Third Respondent.

152. In re-examination, Mr Barton asked Ms Heath about an entry shown on a Blue Sheet at page 55 of the exhibit to her witness statement on 1 October 2009 which was marked as "capital injection". Ms Heath said this might be part of the loan from Sally Kenny moving from client to office account but she could not be sure it was not part of Mr George White's loan without looking at the originating documents. Similarly the entry on 7 October 2009 also marked as "capital injection" would be monies from a loan. She could not recall whether she had asked the Third Respondent how the movement was to be posted. When asked how she would know which ledger to post amounts to she responded that when money was to go into office account it would go into office bank account and ledger 2–009 would be debited. She had needed to allocate the money and in order to do so would need a list of the clients the monies related to, sometimes the First Respondent would give her a list of the amounts but they did not always add up.

153. Mr Barton asked Ms Heath about the entries shown on the 2-009 ledger starting at page 11 of DEB1. The description "monies owed to client" had been entered by

Ms Heath as this fitted the description given best, no one had told her to give it that description. She was asked how she could distinguish between a transfer described as "on account of costs" and "monies owed to client". She replied that some of it was money from the loan to office account and was described as "monies owed to client" and the rest was money "on account of costs".

154. In questioning from the Tribunal, Ms Heath said that she had spoken to both of the Respondents about payment of salaries from client account and had also spoken to Mr RF about it. The suspense account 2–009 had been headed with the Third Respondent's initials since all the fee earners initially had miscellaneous matters ledgers and that ledger had been the Third Respondent's; the loan from Mr White had been placed in that account on the First Respondent's instructions.

The Evidence of Gillian Lawrence

155. Ms Lawrence confirmed that her statement dated 21 February 2013 was true to the best of her knowledge and belief.

156. In cross-examination by Mr Egleton she said that she had reported to both the Respondents whilst she worked at the Firm; she had known the First Respondent from a previous Firm where they had worked together and they had got on "fine" there. She also knew Mr SH from the previous Firm but she had never had any dealings with his work. She had created her attendance note dated 28 March 2011 concerning Mr K as Mr SH had become aware of what had happened and had asked her to make such a note.

157. She accepted by reference to the ledger card relating to Mr K (EC/3) that the bill in question had been entered on the ledger even though she had referred to that invoice (number 2236) as a "dummy bill" in her attendance note. The money had been transferred to office account following posting on the ledger relating to Mr K and she did the transfer from the bank. She was asked what she had thought the Third Respondent had meant when she allegedly told her to do a "dummy bill". She replied that she did not know what that meant and she had asked the Third Respondent what she had wanted her to do. It was put to her that what the Third Respondent had actually asked her to do was a "pro forma bill" but she denied this and repeated that she had been asked to prepare a "dummy bill". She had then prepared the invoice for £4,000 plus VAT but not the transfer slips. Mr Egleton asked what the purpose was of being asked not to do the transfer slips and she responded that this would mean that the transfer would not show on the client ledger; the invoice had been placed on the client file but the money transferred wouldn't show on the ledger. She was adamant that she had been asked not to do the transfer slips but agreed that the money had been transferred.

158. Ms Lawrence went on to say that thinking further about this particular bill, she had been asked to do the transfer slips later by Coral Armistead and they may have been post-dated when put into PC Law. The money itself had been transferred on the Thursday and she was aware that money had been transferred as she had prepared the transfer but she knew that the transfer slips had not been done. She did not physically transfer the money but loaded it ready to be released as at that stage it still had to be authorised. She could say that she had done all the preparatory work and the money

had been released by someone without a transfer slip, so that the item would not have been posted. She had not done the transfer slip until the Tuesday. She could see that the physical transfer was made on 10 March and that money had been transferred into the office account on that same date. Someone had released the transfer but it is not been her. Mr Egleton asked that if the transfer had been posted later on, on the Tuesday, then wouldn't the transfer be dated 15 March and she replied that she was saying that the transfer slips must have been post-dated back to when the transaction happened but she could not remember exactly how PC Law worked. Mr Egleton pointed out that the dates shown on the ledger were 10 March and 14 March and Ms Lawrence said that she could not remember what had happened but she guessed that she had been asked to put the date as 10 March. It was put to her by Mr Egleton that the bill was not a "dummy" and she responded that she had not been sure what to call it; in many ways it was no different to other bills, except there was no narrative. There was nothing unusual about it.

159. She agreed that Mr SH had wanted to send a telegraphic transfer ("TT") of the whole of the monies, £59,975 to Mr CC without deducting any costs owed to the Firm. She had not had any conversation with Mr SH to the effect that he would pay the equivalent of the outstanding bill to the Firm. She was asked whether she transferred the remainder of the money to Mr CC on 14 or 15 March and she responded that the 14 March date was the TT to Mr CC and that she had done the transfers on 15 March but had not backdated them. When Mr Egleton asked her whether the ledger would only print out transactions on the dates they occurred she responded that the transfer slips had to be keyed in and she could not recall whether PC Law allowed the operator to select a date.

160. Mr Egleton put it to her that if her attendance note was correct by 15 March the ledger would be showing the correct figures but she responded that she had not looked at the ledger on 15 March; the reason she had known that it was showing a negative figure was because she had known about the two transfers. Mr Egleton asked whether the Third Respondent had told her that Mr SH had not wanted the fees deducted from the TT to Mr CC as he was going to cover it and Ms Lawrence replied that the Third Respondent had told her that but it did not make any sense. She had never been asked to do a "dummy" bill before.

161. In re-examination by Mr Barton, Ms Lawrence said that the Third Respondent had given her the details for the invoice of 10 March 2011, which were fees in the sum of £4,000 plus VAT. The TT fee was £15 for a telegraphic transfer of £59,985 and this was also shown on the ledger. The last time she had seen the bill it had been in a clear plastic wallet which had contained a couple of sheets of paper. Typically with a bill there would be an engrossment, a copy for the file and a copy for the bill book which would be kept in reception. In this case there was just the file copy and the bill book copy. When asked whether there was anything said about how Mr K was to be informed about the charge, Ms Lawrence said that she could not remember whether she had asked for a narrative, she had written on the bill and handed it to the Third Respondent and that was the last she had seen of it. She did not know whether Mr K had been told about this bill.

The Evidence of Coral Armistead

162. Ms Armistead confirmed that her statement dated 15 January 2013 was true to the best of her knowledge and belief.

163. In cross-examination by Mr Egleton's Ms Armistead was asked how familiar she was with the computer system PC Law and whether entries could be backdated. She responded that she had never inputted to the system and so she could not give a definitive answer; however it seemed reasonable that one should be able to backdate entries to allow for example for holidays.

164. Ms Armistead was taken through the events concerning the Second Respondent and how she had become concerned about a conveyancing transaction involving a Mr and Mrs R. She had discovered that the Second Respondent had not cashed cheques received from the insurers or informed the clients. It was at that stage she had seen the transfers to ledger 2–009.

165. The witness was asked to go to page 6 of her witness statement where she had said that she had sent an email to the First Respondent concerning transfers from the ledger of Mr and Mrs R to ledger 2-009. She had said that she did not understand why the Firm would transfer client monies to a miscellaneous file and that she had noted other transfers to and from this account. She asked to see the First Respondent as she believed that the Firm was in breach of regulations. He had given her an explanation that it was to do with the computer crash but she said that she had not found this acceptable as there should have been a contingency plan and some files with entries in 2-009 had been opened after the computer crash. She confirmed that her attendance note appended at page 42 to her witness statement showed that the transaction on Mr and Mrs R's ledger was one of many done to reduce the deficit on ledger 2–009.

166. Ms Armistead confirmed that the First Respondent had confronted the Second Respondent and he had admitted everything to him and the First Respondent had concluded that he was not well. However the Second Respondent had not been sacked immediately. She had noticed that the letterhead had changed showing the Third Respondent as a partner in the Firm so she believed that this was a joint decision, it was not clear to her that the only person with authority in the Firm was the First Respondent. In her opinion the Second Respondent should have been dismissed immediately but he was kept on at the Firm.

167. It was put to Ms Armistead that she had been discussing alternative employment before she had handed in her notice in the first week of March 2011. However she denied this but said that she did go into work wondering what she would find and had wanted to leave before something catastrophic happened. She also denied that the Third Respondent had got her to leave the office because she was arranging to set up an alternative, competing business.

168. In re-examination by Mr Barton concerning her attendance note in relation to Mr & Mrs R dated 3 February 2011 at page 40 of the exhibit to her witness statement she was asked whether she recalled whether she had emailed the Respondents separately or together concerning ledger 2-009 and replied that she had done so together but had received no response from the Third Respondent.

The Evidence of Ms Emma Coates, the Third Respondent

169. In her evidence the Third Respondent said that she had been a FILEX since November 1996 and she outlined her employment history, which included a 14 year period of time when she had worked for the First Respondent. The First Respondent had contacted her and they agreed to set up an office in Selsey in premises that she owned, Clock House. He had undertaken to train her and the plan was that she would eventually take over the office when she qualified as a solicitor and he would become a full-time judge. They had briefly been in a personal relationship from 2004 to early 2006 and had lived in Ivy House, a property owned in her sole name. The First Respondent had promised her that as soon as she qualified she would be made a partner in the Firm. She understood that an application for a multidisciplinary partnership had been withdrawn as the First Respondent had not renewed his practising certificate; she had not withdrawn the application herself. The notepaper which showed that she was a partner in the Firm had been printed at the First Respondent's request and the First Respondent had given her the impression that her partnership would merely be a rubber-stamping exercise by the SRA. Somehow the notepaper had come into use and although she could not say what date that had been, she could say that it would not have been in use unless the application had been submitted to the SRA.

The deficit on client account, the loan from Mr White and the withdrawals from ledger 2-009

170. The Third Respondent said that she had had no input into the calculation of the amount to be borrowed and had relied on the First Respondent. Whilst she had thought it was a lot of money, she had relied on the First Respondent's judgement as she had known him for 20 years and he was a judge. She had not known about the deficit when Mr White was approached for the loan but had seen the list from the First Respondent as to how the money was to be distributed. She produced a memo and an internal distribution envelope (EC/15) and said that the memo was in the First Respondent's handwriting and indicated how the loan monies were to be apportioned. Whilst the First Respondent did not use the word "shortfall" she was concerned that the Firm did not have enough money to pay its outstanding liabilities.

171. The letter to Mr White dated 12 May 2009 at page 116 of DEB1 had been dictated by the First Respondent and typed by her, so she had known its contents. She had been aware that the First Respondent was going to write the letter and she had said that she would put up the collateral for anything that the First Respondent wanted to do. The Third Respondent did not believe however that she had typed the letter dated 14 May 2009, exhibited from page 14 to Mr White's statement, but admitted that she may have seen it. Each of the properties mentioned within it, offered for security to Mr White, Clock House, Ivy House and the Old Cottage belonged to her.

172. The letter of the 19 May 2009 had gone out by email and at the time she had believed that the Firm was doing well and would expand. If she had known that there was a deficit on client account in the region of £339,000 she would not have put her properties up as security; she had done as she was told.

173. She admitted that she must have sent the email on page 30 of the exhibit to Mr White's statement. However she said that the First Respondent would have stood

over her and dictated it, as he was dealing with the terms of the loan. She would not have put in anything material to the email. She did not recall having many conversations at this time with Mr White as she had not been dealing with the loan or taking the lead upon it. She thought that she had composed the email of 15 June 2009, shown at page 32 of the exhibit to Mr White's statement, although it did not really contain her terminology but it did appear to have come from her. Similarly, the email dated 25 June 2009 although appearing to come from her had all the connotations of the First Respondent's prose. The letter dated 3 July 2009 shown at page 54 of Mr White's exhibit had been typed by someone else and signed by her as the First Respondent had not been in the office. The Third Respondent said that it could be seen from Mr White's Particulars of Claim (EC/7) that Mr White accepted that she was not a party to the loan but had provided security for it.

174. She was aware that the cheque from Mr White had arrived as the First Respondent would have told her of its arrival but not that the cheque had initially been paid into ledger 2–001 by mistake and then moved to 2–009. She had thought that this was a temporary arrangement until the agreement was finalised and the monies would be released; however she could not foresee any problems with holding it in client account. Whilst there had been less than two and a half years to repay the loan on the figures given by the First Respondent, this seemed realistic as anything left to pay could be raised from equity or refreshment of the loan at that stage. The risk had all been borne by her because she had thought that the business would eventually belonged to her and she could work to earn the money but as time went on, the First Respondent's behaviour led her to believe that she had made the wrong decision.

175. The Third Respondent said that she had only been aware of the First Respondent allegedly transferring money to Thailand when she had seen Mr RF's material in these proceedings; otherwise she was unaware of any suggestion that money had been transferred to Thailand. The email correspondence on page 140 of Mr White's exhibit bundle, insofar as it related to her telling people in late 2011 about the First Respondent saying that money had been moved to Thailand could not be correct. She had seen the email from Mr RF to the First Respondent dated 29 June 2009 and his response in which he mentioned money coming from Thailand. That email had been sent from the First Respondent's private email address. She also noted the file note of Mr RF at page 146 of Mr White's exhibit bundle in which it was said that the First Respondent had admitted that the "returned" monies had actually come from a loan provided by a client.

176. The Third Respondent was asked to explain why the First Respondent had suggested that she knew about the deficit on client account that had been discovered by Mr RF, which was discussed in his letter dated 7 May 2009 to the First Respondent at page 126 DEB1. At page 130 of DEB1 it could be seen that the First Respondent told Mr Whitmarsh that he had no recollection of seeing this letter at the time and that it had been faxed to 01243 603136, as could be seen from page 128 of the DEB1 which was the Third Respondent's home telephone number. The Third Respondent explained that she had taken the office fax machine home and recalled sending a copy of this letter to Mr Whitmarsh and it could be seen that the fax date was 13 June 2011. She had sent this fax to Mr Whitmarsh which explained why her fax number was upon it; Mr RF did not send faxes but sent accounts and communications to the First Respondent's home address. Mr Egleton also pointed out that the covering letter from

Mr RF mentioned that he had completed and signed off the accountants report and enclosed a copy of that report. The Third Respondent said that she would not have seen this correspondence and the normal post as it was marked "private and confidential". She did recall that the accounts were overdue and Mr RF had arranged to lodge them.

177. The Third Respondent said she was not aware of the deficit of £77,050.76 on ledger 2–006 before Mr White's money was received. She did accept that she was at fault and should have had her wits about her but she did not deal with the accounting entries the only persons who did so were Ms Heath and the First Respondent. She was not aware that a number of transfers had been made to reduce the balance on 2-009 to zero.

178. The Third Respondent was asked by Mr Egleton about the 4 personal payments relating to her that were made from ledger 2-009 in the period after the receipt of money from Mr White. She accepted that the transactions had taken place as could be seen on that ledger. The sum of £3, 847.23 was in respect of mortgage payments on one of her properties; there had been arrears and the First Respondent was acting for her concerning a dispute with Kensington Mortgages; the Firm had undertaken to make the payment. The entry in relation to Hot Tub Barns on 4 September 2009 was for £9,995 and was marked "monies owed to client" but these were not in her words; the payment had been made following a payment into the Firm of £51,000 from the sale of one of her properties, whereupon the First Respondent had immediately withdrawn £10,000. The payment of £2,100 on 29 September 2009 was made to Kensington Mortgages; they had been very difficult to deal with and she had raised money by way of mortgage for funding as she was owed a lot of money in rent by the Firm. The Third Respondent was unsure what the payment of £1, 000 on 23 October 2009 related to but she had not applied the words "monies owed to client" to that entry. She had not received a salary and these monies had been paid in lieu of rent monies. The rental on Clock House was £1500 per month but the Firm did not pay every month.

179. In cross-examination by Mr Barton the Third Respondent said that she accepted that the personal payments to her and the other payments shown in paragraph 62 of the Second Report had come out of client account and had created a deficit. It was a fact that the Firm had in fact used client's money other than was authorised under rule 22 of the Solicitors Accounts Rules; however she was not a partner at the time. She entered a letter dated 18 March 2009 from the Firm to another Firm of solicitors concerning Kensington Mortgages and her property 23 The Horse Shoe (EC/18) into evidence. She had been in arrears on the mortgage on that property but there was a disagreement over the rate that was being applied. The First Respondent had dictated the letter suggesting four payments of not less than £1000 per week for each of the following four weeks from the Firm. She could not recall whether those payments were made but agreed that the payments of £3,847.23 and £2,100 had been made to Kensington Mortgages from ledger 2–009. The payment Hot Tub Barns on 4 September 2009 had been in respect of 2 hot tubs, one for her holiday cottage and one for her home. She believed that she had personally purchased these items and they were necessary to ease a medical condition. She agreed that holiday lettings payments had been done through Firm but said that this had been discussed with

Mr RF. She had not known at the time that ledger 2–009 was overdrawn but she now accepted that it had been.

180. Mr Barton asked her how she had been paid by the Firm and she responded that she did not think she had been paid. She had received little rent for the office premises and had to use a business card to pay staff. Her source of income was her holiday cottage business which consisted of properties she inherited from her parents. In the main she had remortgaged to get a capital sum for living expenses. She was asked whether she had been aware as to how much money she was taking out of client account and she responded that when Mr White's monies had arrived she had kept a list of her withdrawals from account 2–009. Mr Barton asked her to tell the Tribunal the method by which she worked out how much she could take; the Tribunal had already seen from Ms Heath's exhibits that the £5, 000 transferred on 1 October 2009 from client account to office account was a payment that the Third Respondent had initiated. The Third Respondent replied that she assumed that she had made the transfer because of the monies from Mr White and the expenditure incurred in the recruitment of Ms Armistead. Mr Barton pointed out that the sums of £5000, £4000 and £6000 had all been transferred from client account to office account around this time and the Third Respondent said that these monies would have been in respect of fees for Miss Armistead's recruitment and for courses. She was asked to explain how the £220,000 credit that existed after Mr White's money had been paid into ledger 2-009 had all been used by February 2010 and spending had carried on until the overdraft reached £300,000. She responded that the £300,000 from Mr White had been to expand the business and she did not know when the entries were made in ledger 2–009. She had known about the existence of that ledger but insisted that it was not a ledger that monies should be held within; she had not looked at the transactions and had only become aware of them at the meeting with Mr RF on the 22 February 2011. She denied that she had told Ms Heath which ledger to debit the payments to and believed that Ms Heath would have asked the First Respondent. It was put to her that she did know and she had told Ms Heath where to post the entries. She replied that would not have been her decision, if it had been up to her then she would have opened a separate account.

181. The Third Respondent said that she had seen the attendance note dated 21 January 2008 produced by Ms Heath before. It was put to her that she had not gone through the schedules to make sure that Ms Heath had the information necessary to place the transfers, which was an action point from the attendance note, and she replied that she had not in relation to client costs.

182. She agreed that the Post-It note attached to an attendance note dated 21 January 2008 referred to in Ms Heath's statement at paragraph 12 was in her handwriting and indicated that "there are probs amounts gone out of client recorded on paper but not on computer – 28.01.08". Mr Barton asked her why she had identified that as a problem. She responded that the note meant that there were movements on the Blue Sheets which were not entered on the computer. She believed that this was something to do with the time delay because the accounts were only being posted twice a week which had led to a backlog. She and the First Respondent had been addressing issues with Ms Heath and matters had not continued as before. She was asked whether she recalled the memo from Ms Heath of 1 December 2008 which indicated that there were still problems allocating payments from the client account, which was at page 25

of Ms Heath exhibit bundle and she said she did not specifically recall it, she did not share the expertise on accounts that the First Respondent had and she would have gone to him for an answer. However, she agreed that in Ms Heath evidence she had said that if she couldn't allocate an amount then she asked either the Third Respondent or the First Respondent for guidance; it was her responsibility.

183. Mr Barton then read paragraph 11 of Ms Heath's statement to the Third Respondent "there came a time when more than the loan from Sally Kenny was being transferred from client to office account and my schedule at page 18 shows that it was £52,500. I questioned this with Simon Kenny and Emma Coates but never had an explanation that enabled me to make proper postings." It was put to the Third Respondent that she had not challenged Ms Heath evidence. The Third Respondent said that some of this ledger was in the First Respondent's handwriting and she would have told Ms Heath to speak to the First Respondent about the transfers. She would deal with problems as far she was able but had never been given the schedule referred to by Ms Heath and in the majority of cases she deferred to the First Respondent.

184. Mr Barton took the Third Respondent to the letter dated 24 August 2007 addressed to Sally Kenny from the Respondents at the Firm. Mr Barton asked her whether she was saying that she did not know about the Sally Kenny loan to the Firm. She responded that she knew she had some excess funds from the sale of a property and that she intended to invest in the Firm, so to that extent she knew about the loan. It was put to her by Mr Barton that both Sally Kenny's and Mr White's loans to the Firm were used up and exceeded and that she had been on notice. The Third Respondent repeated that she had referred matters to the First Respondent and that she had believed that there was still a credit balance of £31,000 but agreed that she had not checked herself and had trusted the word of the First Respondent. It was put to her by Mr Barton that all communications which were difficult to explain were, on her explanation, because the First Respondent had told her to make them.

185. The Third Respondent said that at the time of Mr White's loan she only knew of two client accounts that were overdrawn but if the First Respondent had given her a list and she had seen the extent of the deficit she would not have entered into the securities with Mr White. It was put to her by Mr Barton that Ms Heath had been telling her about the extent of the deficit and she had known it was not limited to those items. She responded that the First Respondent had answered Ms Heath queries. Mr Barton put it to her that she knew enough to know that records had to be made of client account withdrawals. He suggested that she knew that Mr White's monies had gone into ledger 2–009 and that withdrawals would need to be posted against that same ledger, otherwise she would be unable to keep account of the spending; she knew about the deficit but sought to blame the First Respondent.

<u>The bill in the matter of Mr K</u>

186. The Third Respondent was asked about the suggestion of the "dummy" bill on the matter of Mr K. £64,000 had come into the client account of Mr K in relation to settlement of a dispute. She said that Mr SH had been telling her that Mr K wanted his money. The plastic envelope referred to by Ms Lawrence had been on the First Respondent's chair for over a week for him to sign off the fax. There was a meeting concerning the matter during which it was decided that Mr K should be paid and she

had said that the costs should be deducted before the money was sent out. At that stage Mr SH had said that the money owing should be paid to a Mr CC in settlement of a debt between Mr K and Mr CC and that Mr SH would pay her the costs and she could then pay the staff. Mr SH said that Mr K owed £4,000 plus VAT to the Firm and he then asked the First Respondent to sign the fax and send it to the bank. However the First Respondent would not deal with it that afternoon and agreed with her that the billing should be done properly. She therefore asked Ms Lawrence to do the bill which she thought was the appropriate thing to do rather than route the money through Mr CC. She had not however looked at the file relating to Mr K, to check that the monies were in fact outstanding because Mr SH had said in the presence of the First Respondent that they were and she would not have doubted that statement. The subsequent movement of the £4, 825 from client account to office bank account had been done at that time because the staff needed to be paid; she was away the following week and wanted to ensure that there was sufficient money to meet the staff costs. She now wished she had not got involved in the transaction. She would not have used the word "dummy" invoice and would have said to do a bill but she was angry at what had occurred and may have given Ms Lawrence that impression. She did not trust Mr SH and wanted the money transferred from client to office account. She could not see any point in telling Ms Lawrence not to do the transfer slips which would ultimately come back as a query on the file; in any event she and Ms Lawrence worked closely together and she would not have been that formal. She had not considered it her job to send the bill to the clients and had thought that the bill should go to the client in letter format and Mr SH had the file relating to Mr K. She had not carried out the transfer herself as this would be beyond her.

187. In cross-examination by Mr Barton, it was put to the Third Respondent that the office bank account was in credit by only £197.28 when the £4,825 from Mr K's matter was transferred into office account, as could be seen from 139 of DEB1 and that she had needed this money in order to pay staff salaries; Mr Barton suggested that this was why she had transferred the monies. The Third Respondent denied that payment of the staff salaries was the reason that she had transferred the monies. Mr Barton asked the Third Respondent to look at Ms Lawrence's attendance note from 28 March 2011 where it said "on Thursday 10 March I was in EMC's room and she was discussing the deficit on the office account" and asked the Third Respondent whether Ms Lawrence was discussing the office account with her; she responded that it was highly probable she had been. The words "dummy bill" had been put into Ms Lawrence mouth by Mr SH and she noted that the attendance note had been composed some two weeks after the meeting in question. Mr Barton put it to the Third Respondent that the attendance note was correct and she had given instructions to Ms Lawrence to compose a dummy bill. The Third Respondent categorically denied that she had done so. She said it was apparent that Mr SH had already agreed the fees and she would not expect staff to lie to her. She agreed that she had not checked the file and had composed a bill in respect of "litigation matters"; it was the First Respondent who had told her that it was in respect of litigation matters. She had not asked Mr SH how the £4,000 was constituted but she assumed that he had done timing on the file. It was put to her that she had instructed Ms Lawrence to draw up the bill with a white top copy only; she responded that she could not remember and could not see any reason why she should done so. She had not told Mr K about the bill as Mr SH was in discussions with him. She agreed that it was not her matter but that if she had not acted Mr SH would have paid all the money out to Mr CC. It

appeared to her that she was getting the blame for what had happened when it was nothing to do with her and although it probably wasn't the right thing to do at the time she had not been dishonest. She had worked with Ms Lawrence for 3 to 4 years and her attendance note had been written by Mr SH. She denied having talked to Ms Lawrence about the transfer slips, it did not occur to her and she would not have said it. It was Ms Lawrence's recollection that was wrong and the contents of the attendance note were incorrect. She could not recall the conversation with Ms Lawrence on her mobile in which it was said by Ms Lawrence "I told her about the TT, she asked who had signed it and I replied SPK. She then agreed that the money could be sent out and I reminded her about the dummy bill to which she replied 'Oh I had forgotten about that, oh well SH will just have to pay back the money' ". The Third Respondent asked why Ms Lawrence would have telephoned her; if the First Respondent had signed the TT form then that was the authority and it suggested that Mr SH had frightened Ms Lawrence, saying that she would be in a lot of trouble. She could not recall having a further conversation with Ms Lawrence when the transaction came to light.

188. Mr Barton asked the Third Respondent to turn to her interview with Mr Whitmarsh where at page 28 the conversation continued:

> "CW So what you are saying then in that meeting Mr [SH] said, we have got this money on account for Mr [K].
>
> EC Yes
>
> CW But he has a bill to pay of £4,000 plus VAT
>
> EC Yes
>
> CW and then the balance is to go to Mr [CC]
>
> EC That's it."

Mr Barton put it to the Third Respondent that there was no bill at that stage and the Third Respondent said that it was Mr Whitmarsh had introduced the word "bill". Mr Barton continued reading from the interview notes and the Third Respondent agreed that she had not been the fee earner but in this case Mr SH not understand system. She agreed that she should only deal with proper payments under rule 22 of the Solicitors Accounts Rules and that client money should be looked after; she assumed that the First Respondent was solely responsible and the matter had been discussed in the presence of the First Respondent. There was no reason that she should not pay the money into office account. She had understood that Mr SH was an employee of the Firm since the First Respondent had brought him in in 2005/6. If she had known what was going to happen she would never have agreed to be a signatory on client and office account which was done for the convenience of the First Respondent. Mr Barton said that the statement she made in interview at the bottom of page 29 concerning Mr SH and the First Respondent encapsulated her anger at both of them when she realised that the money owed by Mr K would go to Mr CC. It was put to her that she could not believe that the Firm was entitled that money. She denied this and said that she honestly believed that what she had done was right to protect the client. Putting money into office account protected the client as if anything had gone wrong then the Firm would have to pay but Mr K would never have received any

monies from Mr CC. In addition Mr K did not know the money was going to Mr CC and she did not know why Mr K would want to have his money going to Mr CC.

189. In re-examination by Mr Egleton, the Third Respondent was asked to look at the bank statements showing the debit from client account and credit of £4, 825 to office account, both of which occurred on 10 March 2011 which was the date of the invoice; she was taken to the copy of the First Respondent's letter to Mr Whitmarsh at page 85 of the exhibit bundle. In that letter the First Respondent said that there was a meeting between him, Mr SH and the Third Respondent on 12 March 2011 during which the ledger was discussed, as it was said that the client was requesting his funds. However the ledger showed that the money had already left the account. In conclusion, the Third Respondent was asked if she was aware of what had happened to the monies sent by TT to Mr CC and she responded that ultimately they had been transferred to Mr SH's Jersey bank account.

Mr PR's estate

190. In relation to Mr PR's estate, the Third Respondent said that she had a power of attorney from 27 March 2009 (EC/9) and whilst she had no control over Mr PR's finances, it comforted him that she had the power of attorney. The executors of his will had appointed the Firm to deal with his estate and she dealt with his son Mr TR. There was no client care letter as Mr SH had been involved to begin with and the file had been out of her control; she would however have written a client care letter. She had seen an email between the First Respondent and Mr TR where total fees had been agreed in the sum of £35,000 on a percentage basis. The estate was worth some £1.5 million and the amount of work required would be substantial given the location and variety of the assets. Her recollection was not that Unit 4 had been offered free of charge to Mr TR but that the Unit, which was used in part for storage of files, could be rented to store the remaining classic cars in Mr PR's estate once Mr TR had decided which were to be kept. She was not sure why he had thought he could use the Unit for nothing. Mr Egleton asked the Third Respondent whether Unit 4 was already leased and she responded that it was on a licence; Mr PR had known the landlords and had a good relationship with them. The charges for electricity and council tax at the Unit were in the Third Respondent's view reasonable for the size and type of Unit, in particular there was a humidifier in situ which was on all the time to preserve the classic cars.

191. In cross-examination Mr Barton put it to the Third Respondent that the amounts charged for Unit 4 against Mr PR's estate had been improperly charged. She referred to an email dated 12 October 2010 and timed at 16:54 from Mr TR which she had printed from her computer the previous evening (EC/1). This email was in response to an email from the trainee solicitor on the same day which was timed at 16:57. The Third Respondent said that the timing could be explained by the fact that Mr TR was in Norway. Mr Barton observed that the appearance of the email was curious and suggested that it was remarkable that the Third Respondent had only now printed it but the Third Respondent was adamant that it was a genuine document. The email from Mr TR said, amongst other things, "… The outstanding invoices are for rent for Unit 3 and 4".

192. The Third Respondent was asked whether she was aware as to why the client ledger account for Mr PR showed bills to the value of £34,500 but £37,500 had been transferred. She said that she was not aware and someone had altered the records on the billing book; information had been sent to the Applicant to show that the amounts did not tally. The invoice for £7000, invoice number 1960, was produced (EC/10) dated 22 May 2009. The Third Respondent said that the First Respondent was in charge of all computer entries and that he had written "POSTED" on this invoice. Only three bills had been delivered. The bank client account statement at page 169 of DEB1 showed that the amount paid on 24 May 2010 was £10,000 but in fact the bank office account (EC/11) showed that £7000 had been transferred from Mr PR's ledger to office account on 22 May 2009 and the bank client account for Mr PR at page 159 of DEB1 confirmed this transfer. The Third Respondent therefore believed that Mr Whitmarsh had confused 2009 and 2010 entries. It was put to her by Mr Barton that there was still the entry on page 161 of DEB1 showing the bill on invoice 1960 as being £7,000 but the Third Respondent said that this particular record was open to abuse throughout May 2010 and she suggested that the entry had been put in subsequently as the £7000 figure was shown to one side.

193. Mr Egleton asked the Third Respondent about the other invoices on Mr PR's matter, numbers 1961 and 1962. The Third Respondent confirmed that she had prepared the bills and that the First Respondent had known about them. She knew of his allegation that the monies had been taken without permission and used for a holiday in Barbados for her and others but in fact the First Respondent had actually pushed her to book the holiday and had agreed she could take other staff with her. She had told the First Respondent that she would need to bill Mr PR's estate and he agreed as she had done the work on it. It did not make any sense for the First Respondent to say that he did not know about the holiday as he had obtained suntan cream for her birthday party in the Board room at the Firm. She was asked about the £12,500 spent on flights to Barbados; in fact the flights had cost more than £12,500 and she had made up the difference. She agreed with the figures for accommodation and taxis to the airport given at paragraph 110 of the Second Report but said that the entry shown for Arasys Ltd was not related to the holiday but was for a toning machine which one of the First Respondent's clients was investing in.

194. In cross-examination by Mr Barton the Third Respondent was asked about what she had said in her interview with Mr Whitmarsh concerning the flights to Barbados. She agreed that she had travelled Club Class and it was third time she had been to Barbados. The seats on the plane had been held for her and she was being chased to book them. She had told Mr Whitmarsh that the First Respondent agreed to one of the members of staff going as he had been working a lot of overtime to refit the office for which he was not being paid. In relation to the bills on Mr PR's estate, Mr Barton noted that no VAT had been charged on the one for £15,000 and the Third Respondent replied that this was because both executors were outside the UK and she understood from the First Respondent that no VAT was therefore payable. She had absolutely satisfied herself that it was proper to charge £15,000 in accordance with the First Respondent's agreement for fixed fees of £35,000. Mr Barton put it to her that Mr TR had said he had received no bills from the Firm and that the bill for £15,000 was not delivered to him. The Third Respondent placed exhibits EC/16 and EC/17 into evidence. She said that Mr TR wanted her to bill as much before the death of Mr PR as possible, he had asked for a breakdown of the April 2010 bills in his email

(EC/16) and he had been informed at the time of the charge by either herself or the trainee solicitor. This would have been in writing. Mr Barton said that a great deal of time would have been saved if the Third Respondent had dealt with these points at the time she was asked to do so by the SRA. Mr Barton also said that he suggested that she did not at the time tell the client that the bills were being raised and that the money was transferred in order to fund holiday to Barbados, neither had she told Mr Whitmarsh that she had notified the client of the bill. She responded that the bills had been raised as a matter of course and that Mr TR knew that he had to pay £35,000. The situation was not as being portrayed by Mr Barton.

195. In relation to the sale of 8 Grove Road, the Third Respondent said that there had been additional work involved in removing possessions from the house, cleaning and obtaining a skip which accounted for the extra charges to the estate. This extra expenditure was detailed on Mr PR's ledger at page 166 of DEB1 under the heading "Mr S Shoesmith - £700", whilst Mr Shoesmith had only performed the house clearance all of the extra expenditure seemed to have been lumped together under his name. A separate file had been opened by Ms Armistead for the conveyancing matter and the £1500 bill had been deducted from the conveyancing ledger.

196. The Third Respondent said that she had never been accused of being dishonest and that she had amended the letter to the client to reflect the higher fees.

197. The Third Respondent produced some estate agents sales details relating to 8 Grove Road. She explained that Mr PR had had his own gardener who was expensive. The tenants had been relatives who had used the house as a holiday home and Mr PR had only wanted to charge them £1 per month rent. The tenants had been in an out of the office telling her that Mr PR did not want them to pay the outgoings and Mr TR had told her to cancel the gardener. However Mr TR had met with the gardener and had second thoughts and wanted to reinstate him, so the gardener was paid. Mr Egleton referred to page 191 of DEB1, and in particular clause 3.19 of the tenants' obligations under the tenancy agreement which specified that they should do the gardening. The Third Respondent repeated that she would not have reinstated the gardener if Mr TR had not told her to do it. In re-examination by Mr Egleton, she produced an email dated 9 June 2009 from Mr TR (EC/19) to her which stated:

> "regarding the gardener: I think taking him on again is something I will do out of my own pocket the next 2 years.
> Since the garden is in such good condition I think it's a pity to let it decay. And it might not be such a bad idea (investmen (sic)) to keep it up-to-date."

198. Mr Barton asked whether it was correct that the gardener's daughter, Emma, had worked for her. The Third Respondent said that she had joined her Firm in November 2011 and left in February 2013. Mr Barton also asked whether it was correct that the gardener in question had been engaged for the Firm's offices and three of the Third Respondent's holiday cottages and had been working for her before he started to work at 8 Grove Road and that in just over 2 years he had charged some £14,000 for gardening work at the property. The Third Respondent said that she believed there was an outstanding bill of £3,000 when Mr PR died. She was asked how she reconciled this amount for gardening work when it was the tenants' liability under the tenancy agreement to keep the gardens in good order. The Third Respondent said that

she had already explained that point, Mr TR had spoken to the tenant at Mr PR's funeral and had re-engaged him. She had authorised the bills with Mr TR before paying them. The bills submitted by the gardening firm were then put into evidence by the Applicant. Mr Barton pointed out that there was an amount included on the bill dated 8 April 2009 for "Peter's dry-cleaning =£40". The Third Respondent said that this had occurred before she had become involved with the estate and the gardener had generally looked after Mr PR, these bills were for the periods after his death. The tenancy had been entered into in April 2009 and that particular bill related to the liabilities prior to the tenancy agreement.

199. The Third Respondent was asked by Mr Egleton what she had to say about Unit 4 and the fact that Mr TR had not believed he would be charged for its use. The Third Respondent produced a chain of emails between her and Mr TR, the first dated 12 October 2010, that dealt with the matter (EC/1). It could be seen from those emails that Mr TR had been informed that there was a charge for each Unit per quarter of £1,847.50, totalling approximately £20,000 per annum and that he had raised no query about these charges.

200. The Third Respondent concluded her evidence by saying that she did admit breaches of the Rules and admitted that an order under section 43 of the Solicitors Act 1974 could be made against her. She accepted that she was at fault and did not seek to blame anyone other than the First Respondent and Mr SH. Mr White had enforced the securities for his loan and First Respondent and his sister had commenced bankruptcy proceedings against her, in total she had lost around £600,000. In questioning from the Tribunal she said that she had thought that the deficit on client account had been caused by a combination of factors including matters that the First Respondent had said he was attempting to resolve with the previous partners and the fact that Ms Heath is not inputting information into the computer system fast enough. The First Respondent had always said he needed time to sort matters out and while she had thought that the situation was a mess she had never thought there was anything dubious about it.

<u>Submissions made on behalf of the Third Respondent</u>

201. Mr Egleton told the Tribunal that, contrary to what Mr Barton had told them, the Third Respondent did accept responsibility and had admitted breaches of the Rules. With the benefit of hindsight she accepted that her behaviour had been unwise, negligent and maybe reckless but she firmly rejected that it had been dishonest. Her integrity was important to her. By contrast, the First Respondent had chosen not to take part in the proceedings and Mr Egleton submitted, in the strongest possible terms, that the First Respondent was not be trusted.

202. In Mr Egleton's submission it was necessary to look at the First Respondent in order to properly assess the behaviour of the Third Respondent. There had been breaches by the First Respondent in the past, he had received a warning for them and these breaches were an indication of his ability to give misleading and inaccurate information. Subsequently, less than 2 years later, he had signed an application for PII insurance representing that he had never been the subject of any investigation by the regulatory bodies, which was untrue. When he was asked why he had done that by Mr Whitmarsh he said that he had forgotten this investigation and warning, despite it

being a serious matter. He had fooled the SRA by submitting false accounts with the unwitting help of Mr RF. There were so many examples of this type of behaviour by the First Respondent but the most instructive was the loan from Mr White. The Tribunal were asked to look at the totality of the matters.

203. The Tribunal was asked to look at page 126 of DEB1, Mr RF's letter to the First Respondent dated 7 May 2009. At paragraph 7.2 of that letter Mr RF confirmed that there was a deficit of £339,790.99 on client account. The story that the First Respondent had given to Mr RF was that because of the banking crash he had transferred the client account money out to a bank in Thailand. Mr RF had been taken in by that story and had accepted it. The First Respondent sounded plausible but when what he was saying was examined in detail it did not stand close scrutiny.

204. The First Respondent had said the same thing to Ms Heath in the same meeting and within the week had written to Mr White the letter of 12 May 2009, the contents of which were untrue by omission. In that letter he said that the only liabilities of the Firm were a term loan of £28,000 and problems left by previous partners which had cost £25,000, met from working capital. So the only problem that the First Respondent told Mr White about was the lack of working capital only one week after the letter from Mr RF. In his letter to Mr White dated 19 May 2009 the figure of £300,000 was mentioned; in Mr Egleton's submission this was not a coincidence, the First Respondent knew about the deficit. On 27 May 2009 Mr RF signed off the accounts and those accounts listed a liability to clients at £382,634 and cash held in client account at £383,005; Mr RF had included the £340,000 because he had been told and accepted was in Thailand. It was on this basis that he had signed the declaration on the accounts which gave the SRA comfort that the Firm was being properly managed. In Mrs RF's exhibit to her statement the Tribunal could see the email written by Mr RF to himself on 28 May 2011 in which he said he had signed the accounts under duress.

205. On 22 May 2009 the First Respondent had sent an email to the bank saying that he was "refinancing with a private investor… and he has had independent advice". This was untrue and Mr White had not had independent advice, there was a tentative suggestion that he might seek independent advice but the First Respondent had taken advantage of their friendship and told an untruth to the bank. He had also told the bank in that same email that "the funds will be available in 21 days when our intention is to pay off the loan account and have working capital in office account of c £50,000". This was another untruth.

206. By 30 June 30 2009 the First Respondent was attempting to maintain the position by sending Mr RF an email explaining the delay in the receipt of the monies being due to a form having to go back and forth, when all he was actually doing was trying to buy time before the receipt of the loan monies from Mr White. It was instructive to see how the First Respondent had dealt with that point in his email to Mr Whitmarsh dated 2 November 2011 "3. For the avoidance of doubt, I did not transfer any money abroad as now appears to be suggested". He knew that he was the origin of that suggestion. In that same email he went on to say "it is clear that Ms Coates had been withdrawing funds from the business in substantial amounts without my knowledge for some considerable time, certainly since 2007. I feel that she was misleading both [RF] and myself throughout this period and in particular when dealing with the deficit

in May 2009." This was in Mr Egleton's submission a blatant attempt to mislead Mr Whitmarsh.

207. On 11 July 2009 the cheque from Mr White was received and the First Respondent then told Mr RF that the money had been returned from abroad and that the deficit had been filled. Mr White did not know about the deficit. On 24 July 2009 the First Respondent wrote to him saying "you having kindly forwarded to us a cheque for £300,000 which we have paid into client account and are holding to order pending completion of this matter." This was another untruth as by the time that letter was sent there had already been a transfer out of that account of £35,000. Mr White had been taken in and there were tragic consequences for Mr RF. If anyone was avoiding responsibility for what had occurred it was the First Respondent; he put the £300,000 on the Third Respondent's miscellaneous provisions ledger not his own and in Mr Egleton's submission it was clear that in reality the 2–009 account was controlled by the First Respondent.

208. By 2011 things were getting out of control and the First Respondent knew that the SRA were going to visit; he knew that the client money had gone and so had Mr White's money. The deficit was in excess of £500,000 by that stage and he had to disguise it. He started to raid all of the other client accounts so that ledger 2–009 showed a deficit of only £30,000. The Tribunal were asked to recollect Ms Armistead's evidence in which she said that when she'd asked about these movements he had told it was to do with the 2008 computer crash. She had said that she didn't accept that statement and could not see the sense of it. Mr RF then returned to the Firm; he realised what had happened and it was sad that he referred to a meeting with the First Respondent as being "amicable" when the First Respondent admitted that what he had told him concerning the monies was not true. He had had a right to be outraged. Even today the First Respondent would not accept that he had misled Mr White and still sought to blame everyone else.

209. This background would give the Tribunal an insight into how the Third Respondent had behaved; she was not a willing party and did not know what the First Respondent had known. There was a passage in Mr RF's 22 February 2011 attendance note where Mr RF said that she could not understand the numbers. In many ways she had also been a victim of the First Respondent. If she had known about the deficit she would not have gone along with the loan from Mr White as on the figures £640,000 would be required from the Firm. It was anyway unrealistic to suppose that the Firm could repay £300,000 plus interest in two and a half years to Mr White but it was worse than that; part of Mr White's monies were meant to pay the secured loan at the bank which had been secured on her property. They were never use for that purpose and Mr White now owned that property. This was a clear indication that the Third Respondent did not know the true position.

210. A further example of the First Respondent's audacity was that it was he who had told Mr RF that the money was in Thailand but he now alleged a libel in his defence and part 20 claim in the proceedings against him by Mr White; he said that the Third Respondent had told Mr White that he had taken the monies and deposited them in a bank in Thailand. In fact all the Third Respondent had been doing was repeating the story that the First Respondent had himself put forward. It was an outrageous claim to make in the circumstances.

Findings of Fact and Law

211. The Tribunal reminded the parties that the burden was on the Applicant to prove each and every disputed allegation beyond reasonable doubt.

212. The Tribunal had due regard to the Respondents' rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

213. The Tribunal requested and listened to the interview of the First Respondent to assist it in understanding the case. However, the Tribunal's determination upon the allegations against each of the Respondents was solely based upon the evidence before it.

214. In his Response to the Rule 5 Statement dated 3 October 2012, the First Respondent indicated that he admitted allegations 1.1, 1.2 and 1.5. He denied the other allegations made against him and he denied any dishonesty. In his Position Statement for the hearing he said that it should be noted that his Response was prepared and filed some months before the evidence now provided by the Applicant.

215. Immediately before she gave her evidence the Third Respondent indicated that she would admit allegations 2.1, 2.4 and 2.5. Allegation 2.1 was admitted on the basis of paragraphs 12-19 of the Applicant's Rule 5 statement, omitting the words 'by the Respondent' at the end of paragraph 17. The loan from Mr George White had been placed in client account at his request. Allegation 2.5 was admitted on the basis of paragraph 46 of the Rule 5 Statement i.e. that she had not responded to the SRA's letters dated 8 November 2011 and 19 December 2011. She denied any allegation of dishonesty and any allegation of improper conduct.

216. **The allegations against the First Respondent, Simon Paul Kenny were that:-**

Allegation 1.1 In breach of Rule 32 (16) of the Solicitors Accounts Rules 1998 he used a suspense client ledger account which could not be justified;

216.1 This allegation was admitted by the First Respondent.

216.2 In his response to the Rule 5 Statement, the First Respondent said that the original intention was not to use the ledger as a suspense account but that this was a practice that had developed over time.

216.3 Allegation 1.1 was proved beyond reasonable doubt on the facts and documents before the Tribunal, indeed it had been admitted by the First Respondent.

217 **Allegation 1.2 In breach of Rule 15 (2) of the Solicitors Accounts Rules 1998 he improperly held money other than client money in client account;**

217.1 This allegation was admitted by the First Respondent.

217.2 The First Respondent said that funds were placed in client account as there was uncertainty as to the correct balance and he had wanted to ensure that there were

sufficient funds to cover all monies held on behalf of clients. There was uncertainty as to the correct balance and it was not possible to check the exact figure as a computer crash had removed much of the records and the backup system had failed. Part of the £300,000 was used to prevent a shortfall on client account and could therefore be regarded as client money.

217.3 Allegation 1.2 was proved beyond reasonable doubt on the facts and documents before the Tribunal, indeed it had been admitted by the First Respondent.

218. **Allegation 1.3 In breach of Rule 22 (1) of the said Accounts Rules he withdrew money from client account in circumstances other than permitted and utilised the same for his own benefit or for the benefit of others not entitled thereto;**

218.1 This allegation was denied by the First Respondent.

218.2 The First Respondent denied that he withdrew monies other than permitted from client account for his own benefit or for the benefit of others or that he permitted such withdrawals. He said in his response to the Rule 5 Statement that he did not at any time transfer any funds from client account to any account in which he had any interest or which benefited him personally or to meet a personal appeal or expense. The only transfers he had authorised with those he believed to be in accordance with the accounts rules, which were sums either sent to or on behalf of clients or permitted transfers to office account.

218.3 The First Respondent alleged that the Third Respondent was responsible for the authorised withdrawals and that these withdrawals had been made without his knowledge or consent. He had not been advised that client account was overdrawn. He acknowledged his strict liability for improper withdrawals, even though the transactions were not his and he had not benefited in any way.

218.4 In the First Respondent's submission the evidence did not demonstrate that he had known that client account was overdrawn or that there was any dishonesty on his part. He accepted that he had been informed that client account was overdrawn in 2009 and said he had taken immediate steps to rectify the position. He had told Mr Whitmarsh that the account was overdrawn as a result of the activities of the Third Respondent which had taken place without his knowledge. Once he had become aware of the activity, he directed that no further funds be withdrawn from either client or office account without his approval. He said that the Third Respondent had ignored this instruction.

218.5 The Tribunal had carefully examined all of the evidence before it and had listened assiduously to what Mr Barton had had to say concerning this allegation; it had also taken careful note of the First Respondent's statements concerning this allegation. The First Respondent was a signatory to client account and the sole principal responsible under the Solicitors Accounts Rules for client money deposited with the Firm. It was clear from the evidence presented to the Tribunal that the First Respondent was fully aware of the substantial deficit on client account and that he made efforts to conceal it. When challenged by Mr Whitmarsh he could offer no explanation for the deficit. The evidence before the Tribunal was that he had deliberately and systematically removed monies from other accounts and placed them into ledger 2-009 to conceal

the deficit because he knew that there was to be an SRA inspection. The Tribunal was completely satisfied that this allegation had been proved beyond a reasonable doubt on the evidence before it.

218.6 This allegation was put before the Tribunal as one of dishonesty. The Tribunal had applied the dual test of dishonesty laid down in Twinsectra Ltd v Yardley and Others [2002] UKHL 12 and was satisfied so that it was sure that in acting as he did, the First Respondent was dishonest by the standards of reasonable and honest people and that he knew his conduct was dishonest by those same standards.

219. **Allegation 1.4 In breach of Rule 1.02 of the Solicitors Code of Conduct 2007 he failed to act with integrity when he gave his reporting accountant Mr "RF" false and misleading information in either or both of the following respects:**

1.4.1 In or about May 2009 that he had transferred or drawn on client money to keep it safe, whereas the true position was that a shortfall existed, and/or

1.4.2 as to the source of money deposited in his client account;

219.1 Allegation 1.4 had been denied by the First Respondent in its original form and the Tribunal treated the allegation as denied by the First Respondent in its amended form.

219.2 In his reply to the Rule 5 Statement the First Respondent said that he had not supplied Mr RF with false and misleading information as to the source of money deposited in client account neither did he authorise, permit or encourage anyone else to do so and it was not clear whether any false or misleading information had been given to Mr RF. At no time had he informed Mr RF that he had withdrawn sums totalling £339,790.99, or any other sum, from client account and transferred it overseas. No sums had been moved abroad by him or on his behalf and there was no evidence that any sums were in fact transferred.

219.3 The clear documentary evidence before the Tribunal was that the First Respondent had given Mr RF false and misleading information in that he had told him that he had transferred money to Thailand to keep it safe from the banking crisis when in fact he knew that a deficit existed on client account. He had also told him that the money had returned when in fact the source of the monies returned to client account was a loan from Mr George White. At page 100 of DEB1 was an email to Mr RF from the First Respondent purporting to give an explanation as to why there was a delay in receipt of money. The First Respondent had explained the contents of this email by saying that his email account had been used by the Third Respondent. The Tribunal rejected this explanation since other evidence that had been presented to it confirmed that the First Respondent had misled Mr RF in this regard. In her evidence Ms Heath said that she had overheard Mr RF ask the First Respondent about the shortfall and he had said that he had moved money into other bank accounts due to the Northern Rock crisis. He had said that some of the money was in foreign accounts and she had been under the impression that he was going to get the money back from abroad. The Tribunal had also seen an email attendance note composed by Mr RF in which it was noted that the First Respondent had admitted that he had lied to him about the source of the monies coming into client account. It was wholly disingenuous for the First

Respondent to now say that this story had been originated by the Third Respondent. The Tribunal accordingly found both parts of this allegation to have been proved beyond a reasonable doubt on the facts and documents before it.

219.4 This allegation had been put before the Tribunal as one of dishonesty. Having applied the test in Twinsectra, the Tribunal was satisfied so that it was sure that in acting as he did, the First Respondent was dishonest by the standards of reasonable and honest people and that he knew his conduct was dishonest by those same standards.

220. Allegation 1.5 In breach of Rule 1.02 of the Solicitors Code of Conduct 2007 he failed to act with integrity when on the 30 September 2010 he submitted to AON a professional indemnity insurance proposal form that was misleading;

220.1 This allegation was admitted by the First Respondent.

220.2 The First Respondent said that he had not submitted the misleading form intentionally but had completely forgotten about the previous warning given to him by the SRA.

220.3 The Tribunal found allegation 1.5 proved beyond a reasonable doubt on the facts and documents before it, indeed it had been admitted by the First Respondent. The Tribunal rejected the explanation given by the First Respondent as being unlikely in all the circumstances.

221. **Allegation 1.6 In breach of Rule 12.01 of the said Code he practised with Emma Coates in a partnership which had not been recognised by the Authority;**

221.1 Allegation 1.6 was denied by the First Respondent.

221.2 The First Respondent said in his response to the Rule 5 Statement that the letter dated 9 February 2011 from the SRA informing him that he must not practice as a partnership was received on a day when he had been out of the office. He believed that the Third Respondent had deliberately kept the contents of the letter from him and had previously informed him that the SRA had approved the application.

221.3 The Tribunal found as a fact from the documents before it that the First Respondent had practised with the Third Respondent in a partnership which had not been recognised by the SRA. The explanation that he gave was contradicted by the Third Respondent's evidence on this point and the Tribunal found that evidence to have been credible. Even on his own account the First Respondent had taken no active steps to confirm with the SRA that the application had been approved. The Tribunal accordingly found this allegation to have been proved beyond a reasonable doubt on the facts and documents before it.

222. **Allegation 1.7 In breach of Rule 5.01 of the said Code he failed to make arrangements for the effective management of the Firm as a whole and in particular:**

1.7.1 for compliance with his duties as a principal to exercise appropriate supervision over all staff;

1.7.2 for compliance by the Firm and individuals with key regulatory requirements, in this case compliance with the Solicitors Accounts Rules 1998 and the Code 2007;

1.7.3 for financial control of budgets, expenditure and cash flow.

222.1 Allegation 1.7 was denied in its entirety by the First Respondent.

222.2 The First Respondent said that he had made appropriate arrangements for management, supervision and compliance and financial control but had been the victim of fraud. He said that he had not permitted the Third Respondent to run her separate businesses through the firm and such action had been taken without his knowledge.

222.3 The Tribunal had been presented with abundant evidence to show that the First Respondent had failed to supervise the Third Respondent and Mr SH. Similarly, there was overwhelming evidence to show that key regulatory requirements had not been complied with at the Firm, indeed there had been a substantial deficit on client account which the First Respondent was unable to explain. By his own admission he had been unaware of the financial problems that the Firm was facing. The Tribunal accordingly found each part of this allegation to have been proved beyond a reasonable doubt on the facts and documents before it.

223. **The allegations against the Third Respondent, Emma Coates were that:-**

Allegation 2.1 In breach of Rule 15 (2) of the Solicitors Accounts Rules 1998 she improperly held money other than client money in client account;

223.1 Allegation 2.1 was admitted by the Third Respondent.

223.2 The Tribunal found that allegation 2.1 had been proved beyond reasonable doubt on the facts and documents before it.

224. **Allegation 2.2: She withdrew moneys from client account in breach of Rule 22 of the said Accounts Rules and utilised the same for her benefit or for the benefit of others not entitled thereto as follows;**

2.2.1 Between February and December 2010 she withdrew £301,771.45 alternatively £303,659.99 from client bank account utilising a ledger in her name;

2.2.2 She withdrew £19,542.23 (being part of the sums referred to in 2.2.1 above) from client bank account in respect of personal payments for Kensington Mortgages, Hot Tub Barns and drawings;

2.2.3 She authorised the improper withdrawal of £4,825.00 being money credited to the ledger of a client Mr "K";

2.2.4 She improperly withdrew money totalling £37,500 from client bank account purportedly in respect of bills drawn on the estate of Mr "PR"

deceased of which £27,731.15 was utilised for a holiday for herself and others in Barbados

224.1 Allegation 2.2.1 was denied by the Third Respondent, as was any dishonesty in respect of it.

224.2 Mr Egleton said that the figures given were undisputed and it was accepted that various amounts had been withdrawn but it was disputed that it was the Third Respondent who had withdrawn them. The Applicant had not proved his case in this respect and if ever a person has paid for allowing her name to be on an account it was the Third Respondent. She had become a signatory because the First Respondent was out of the office so much. She accepted that she was a signatory but it was unrealistic to suppose that she stood as an equal to the First Respondent.

224.3 The Tribunal found the Third Respondent's evidence to have been credible concerning the withdrawals and that the Applicant had not proved beyond a reasonable doubt who had made the withdrawals. However, as a joint signatory to the account and as someone held out as a partner she was liable for the withdrawals, whether she had made them personally or not. The Tribunal accordingly found this allegation to have been proved on the facts and documents before it.

224.4 This allegation had been put before the Tribunal as one of dishonesty. The Third Respondent's evidence had been that Mr White's funds had been placed in ledger 2-009, a client account, at the instigation of Mr White and that she had believed she was entitled to make withdrawals as these were in effect office monies from a capital injection. The Tribunal had applied firstly the objective test in Twinsectra and had concluded that, given this explanation, her behaviour in this regard would not be regarded as dishonest by the ordinary standards of reasonable and honest people. Neither could her behaviour be regarded as being subjectively dishonest. The Tribunal therefore concluded that neither the subjective nor the objective test in Twinsectra was met and that the Applicant had not proved beyond a reasonable doubt that the Third Respondent had been dishonest in respect of allegation 2.2.1.

224.5 Allegation 2.2.2 was admitted by the Third Respondent but any dishonesty in respect of it was denied.

224.6 Mr Egleton told the Tribunal that the figures were again undisputed and the Third Respondent said that she had taken these monies as drawings. However in assessing culpability the Tribunal was asked to look at the surrounding circumstances; the Third Respondent had made no attempt to hide the withdrawals and they were all on the ledger. The majority of the transfers utilised a standard description which had been automatically generated by the computer. There was no indication that in this respect the Third Respondent had been dishonest.

224.7 The Tribunal found this allegation to have been proved on the facts and documents before but it did not find dishonesty for the same reasons it had not found any dishonesty in respect of allegation 2.2.1. It did however find that the Third Respondent had been reckless in this regard.

224.8 Allegation 2.2.3 was admitted by the Third Respondent in as much as it was an improper withdrawal as proper procedures had not been followed but she denied any dishonesty in respect of it.

224.9 Mr Egleton told the Tribunal that the complainants in relation to the matter of Mr K were the First Respondent and Mr SH and it was they who had drawn the attention of the SRA to the transaction. Mr SH had persuaded Ms Lawrence to make an attendance note. In fact Mr K had not given evidence and there had been no complaint from him. The Tribunal was being asked to assume that the Third Respondent had been dishonest but the dishonesty was in transferring the money so that it ultimately returned to Mr SH. Ms Lawrence's attendance note talked about a "dummy bill" but the Third Respondent had not understood this expression. The ledger showed the transactions. The attendance note had been made at least 18 days afterwards and Ms Lawrence had not done anything about what had happened at the time, it was only when Mr SH became involved that she made the attendance note. The Applicant had asked the Tribunal to find dishonesty but in Mr Egleton's submission the Tribunal had been asked to make a finding on double hearsay. There was no evidence before the Tribunal that the bill had not been submitted to the client; the basis upon which the Applicant had put the allegation was on the evidence of Ms Lawrence and her recollection. The Third Respondent had been told by Mr SH the bill was £4, 000 plus VAT, she accepted that she did not check the file and to that extent she accepted that she was at fault.

224.10 The Tribunal found this allegation proved beyond a reasonable doubt on the facts and documents before it. The Tribunal accepted the evidence of Ms Lawrence who had made the attendance note and found her to have been a convincing witness. The Tribunal accepted that Ms Lawrence had been asked to do a white copy bill but not the transfer slips. The Tribunal had great concerns about the expression "dummy bill" and it was clear that no effort had been made by the Third Respondent to send the bill to the client. The Tribunal had applied the dual tests in Twinsectra and had concluded that such behaviour was objectively dishonest. By her own admission the Third Respondent had not checked the file, had not informed the clients nor sent a bill nor had she made enquiries of Mr SH as to how the pre-VAT sum of £4000 was made up. She had conceded in cross-examination by Mr Barton she may have moved the monies from the bill into office account to ensure that salaries were paid. In her own words she had said that it had probably not been the right thing to do at the time. Mr Egelton had made the observation concerning double hearsay but none of the Tribunals findings in this regard was based upon any such hearsay but on the evidence of a witness and the Respondent's own evidence. The Tribunal had therefore concluded that the subjective test in Twinsectra was met and that the Third Respondent must have known that by the standards of reasonable and honest people her behaviour was dishonest.

224.11 The Third Respondent denied allegation 2.2.4 and denied any dishonesty in regard to it.

224.12 In relation to allegation 2.2.4, Mr Egleton said that the Third Respondent had been a fool to herself in not dealing with this matter appropriately. If she had done so then the SRA might not have proceeded with it. As it was the SRA were relying again on double hearsay; there had been no statement from Mr TR to say that he had not

received bills or authorised the payments to the Firm. This was an estate with many assets and in his email to the bank dated 22 May 2009, it could be seen that the First Respondent had indicated that there was an agreed total fee of £35,000 on the administration of the estate and the Third Respondent had been made aware of that agreement. So far as the Third Respondent was concerned she was entitled to withdraw a total of £35,000 on account of costs. Initially £7,000 had been transferred from client account to office account on 22 May 2009, as referred to in that same email to the bank. The Third Respondent knew that there were fees of £28,000 to come and invoice 1960 might have been put through twice in May 2009 and May 2010; in any event it was not known how it had occurred and the SRA were not blaming the Third Respondent for that error. It was accepted that the transactions were around the time of the Barbados holiday and that the Third Respondent had been in breach of the Solicitors Accounts Rules as it may have been unwise to take the drawings, however there was no question of any dishonesty on her part. There was no question of her creating false bills so that she and others could go on that holiday, that money was due. Mr TR's recollection was not quite right. He had been persuaded by the First Respondent and Mr SH to join in on Sally Kenny's bankruptcy petition against the Third Respondent.

224.13 Mr TR's position appeared to be that he did not have to pay for Unit 4, however the email now produced by the Third Respondent showed that Mr TR knew that he was being charged for Unit 3 and Unit 4. The assistant solicitor had also been involved and she had made no complaint. Mr Egleton asked the Tribunal to reject any suggestion that the email had been fabricated by the Third Respondent. The explanation was that Mr TR's recollection was defective.

224.14 In relation to 8 Grove Road, no completion file had been made available to Mr Whitmarsh and he had assumed that the Third Respondent had overcharged for the conveyancing. However, it was now apparent that the bill had included other items. It could be safely concluded that there was a completion file and ledger as there were no proceeds of sale on the estate's ledger. The evidence before the Tribunal did not support this allegation.

224.15 In Mr Egleton's submission there had been a mistake by the SRA in not looking at all of the gardening services invoices and noting which of those invoices related to the tenancy. For instance the invoice on 9 March 2010 was nothing to do with the tenancy and it predated it. Again, Mr TR's recollection was defective as he made it clear in his email that he wished to re-engage the gardener.

224.16 The Tribunal found that the Applicant had not proved allegation 2.2.4. There was evidence before the Tribunal to show that fixed fee had been agreed in the sum of £35,000 and that the work had been done legitimately. An email had been produced, admittedly very late in the day, to show that Mr TR was aware of the at least 2 of the invoices in question, copies of which had been produced by the Third Respondent. Importantly, there had been no evidence adduced by the Applicant from Mr TR to contradict the Third Respondent's evidence. The Tribunal found this allegation not to have been proved beyond reasonable doubt.

225. Allegation 2.3: She failed to act in the best interests of the client contrary to Rule 1.02 of the Solicitors Code of Conduct 2007 when she improperly charged to the said estate of Mr PR deceased monies totalling £30,058.36;

225.1 This allegation was denied by the Third Respondent.

225.2 The Tribunal found that there had been conflicting evidence on the knowledge of Mr TR as to what work had been permitted on the estate. The Third Respondent had now produced evidence to show that Mr TR did have knowledge and gave his agreement to both the provision of gardening services and rental on Unit 4. The matter was at best unclear without any evidence from Mr TR and the Tribunal found this allegation not to have been proved beyond reasonable doubt.

226. **Allegation 2.4: In breach of Rule 32 (16) of the said Accounts Rules she maintained a suspense client ledger account which could not be justified;**

226.1 This allegation was admitted by the Third Respondent.

226.2 The Tribunal found that allegation 2.4 proved beyond reasonable doubt on the facts and documents before it.

227. **Allegation 2.5: Contrary to Rule 20.05 of the Solicitors Code of Conduct she failed to deal with the Authority in an open prompt and cooperative way.**

227.1 This allegation was admitted by the Third Respondent.

227.2 The Tribunal found that allegation 2.5 proved beyond reasonable doubt on the facts and documents before it.

Previous Disciplinary Matters

228. None.

Mitigation

229. The Tribunal fully considered any the mitigation put forward by the First Respondent in his Reply to the Rule 5 Statement and his Position Statement and the associated documents.

230. The Tribunal fully considered any mitigation put forward by Mr Egleton on behalf of the Third Respondent and all that she had had to say in her evidence before the Tribunal.

Sanction

231. The Tribunal referred to its Guidance Note on Sanctions when considering sanction.

232. The First Respondent had had each and every allegation proved against him including those of dishonesty. This was in the Tribunal's view an extremely serious matter where considerable efforts had been made by the First Respondent to conceal from his

reporting accountant and his regulator a very large deficit on client account. The amount of money withdrawn from client account through ledger 2-009 in a period of less than eighteen months was £526,606.23, all under the First Respondent's stewardship. The case was a shocking one, not least because the First Respondent had been not only a solicitor but also a Deputy District Judge, responsible for administering justice.

233. In the determination of the Tribunal the First Respondent had damaged the reputation of the profession and presented a serious risk to the public. The only fair and proportionate penalty in all the circumstances was that the First Respondent be struck off the Roll of solicitors.

234. In so far as the Third Respondent was concerned she was not a solicitor and consequently the Tribunal had limited jurisdiction to deal with her misconduct. The Tribunal determined that it would exercise its power to make an order under section 43 of the Solicitors Act 1974.

Costs

235. The Applicant asked for costs in the sum of £56, 853.79 against the First Respondent and £44, 152.08 against the Third Respondent. These figures included £13,515.58 against each Respondent in respect of the forensic investigation costs and Mr Barton asked that the Tribunal make a joint and several order in relation to those total forensic investigation costs of £27,031.17.

236. Mr Barton told the Tribunal that he had very recently had a conversation with the First Respondent and the First Respondent had also provided information to Mr Barton with regard to his financial circumstances; there was a letter from him dated 22 May 2013 before the Tribunal which contained details of those circumstances. In Mr Barton's submission if the First Respondent was intending to rely upon his financial circumstances to resist any costs order then he should comply with the guidance provided by Mitting J in the High Court in the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) and file and serve evidence in advance relating to his financial affairs. Whilst he had not explicitly done so he had provided information concerning his financial circumstances which showed that he was in receipt of Job Seekers allowance. The First Respondent said in his letter to Mr Barton dated 16 May 2013 that since he had no capital or resources to meet any costs order, the amount of the costs was academic. Mr Barton also confirmed that the First Respondent had co-operated to an extent with the SRA.

237. Some allegations had not been proven against the Third Respondent, however she had not complied with the directions made by the Tribunal and had produced evidence in a fragmented way during the hearing. Such an approach was, in Mr Barton's submission, wholly unsatisfactory and Mr Barton invited the Tribunal to conclude that all of the allegations had been properly brought. Indeed, the SRA had no option but to bring all of the allegations in the circumstances; no significant effort had been made by the Third Respondent to address the issues or to comply with directions of the Tribunal. In Mr Barton's submission the Applicant was entitled to its costs.

238. In Mr Egleton's submission the Third Respondent was not a partner in the Firm and she should not be subjected to the costs of the forensic investigation, which would have taken place in any event. It would be unfair to impose joint and several responsibility upon her in regard to those costs. The major fault lay with the First Respondent and she had been dragged into the investigation because she was the signatory to the bank accounts, which was set up as a convenience for the First Respondent. If the Tribunal did decide that she should pay some proportion of those forensic investigation costs, then Mr Egleton said that should be a minor proportion.

239. The Third Respondent had received the costs schedule shortly before the hearing today and in relation to the legal costs, it could be seen that a lot of time had been spent by Mr Barton on the papers. It was accepted that the Third Respondent had not co-operated with the SRA or with the directions of the Tribunal, this was not out of a sense of discourtesy but rather because she was putting her head in the sand. She had been under tremendous pressure, both financial and otherwise and had felt that there was a vendetta against her by the First Respondent and Mr SH with the other civil proceedings and there were also the proceedings taken out by Mr George White. Mr George White had taken the view that he was only likely to recover his monies from the Third Respondent. She accepted that she would have to pay some of the costs but her means were severely reduced. She had produced a Schedule of Properties which showed any equity in each of the five properties she owned. Each property was heavily mortgaged and indeed two were in negative equity. Mr DW had charging orders upon all of the properties and a judgement order against one of them. Judgement had been obtained in the total sum borrowed against the First Respondent and Mr George White had also pursued the Third Respondent on the securities that she had offered. The Third Respondent would be the person who ended up repaying Mr White, since the First Respondent appeared to have no assets. Whilst the Third Respondent accepted the principle of payment of the costs she lacked the means to pay.

240. The Third Respondent had given an indication to Mr Barton on the first day of the hearing that she would admit each of the allegations on the basis that she had not been dishonest. The Tribunal had made a finding of dishonesty but had found certain other allegations not proven. In Mr Egleton's submission some costs should be disallowed.

241. The Third Respondent was still working as an ILEX and the Applicant had a printout of her earnings which were modest. She had the debts in excess of £1 million and had paid considerable costs in relation to the intervention. There was no bankruptcy order made against her and she sought to avoid such an order. She had to accept that she was at fault in not providing the information before today but that information was now available.

242. In response Mr Barton told the Tribunal that the Third Respondent had been a custodian of client money, had known how much had gone missing and that she was liable. Her contention that she was only a signatory to the bank accounts for the convenience of the First Respondent did not affect the claim for the costs of the forensic investigation. It was again incumbent upon her under the principles in Davis and McGlinchey to put before the Tribunal and the Applicant sufficient information that she lacked the means to pay the costs. Mr Barton had written to her on 8 May 2013 inviting her to give that information and it was wholly unsatisfactory that she

had not done so until today when there was no opportunity for the Applicant to assess the financial information provided; there should be an opportunity to test that information and to obtain proper valuations. Mr Barton therefore invited the Tribunal to put off the question of costs to another day and direct the Third Respondent that she produce such financial information.

243. Mr Egleton took the Tribunal through the Schedule of Properties provided by the Third Respondent and agreed that there was no evidence of income from the two properties that had been let out to tenants.

The Tribunal's Decision in Relation to Costs

244. It was right and proper that the Applicant should be awarded costs as each of the allegations had, in the Tribunal's determination, been properly brought. The Tribunal had summarily assessed costs in the amounts requested. However the Tribunal would not accede to Mr Barton's request that the costs of the forensic investigation be imposed jointly and severally upon the Respondents. Any such order would mean that all of those costs would fall upon the Third Respondent, which was inequitable.

245. The Tribunal had examined the financial information provided by the First Respondent and had concluded that at present he was impecunious. However, the Applicant was entitled to its costs and the Tribunal would accordingly make an order for costs not to be enforced without the leave of the Tribunal.

246. The Tribunal had paid careful attention to the financial information provided by the Third Respondent and all that had been said on her behalf by Mr Egleton. The Tribunal agreed with the Applicant that if the Third Respondent had wished to claim that she was impecunious then she should have complied with the principles in Davis and McGlinchey and provided the Applicant with substantive information concerning her financial circumstances in good time before the hearing. However, the Third Respondent had elected to present certain information to the Tribunal today and had not accepted Mr Barton's suggestion that the question of costs be put off to another day. Having carefully considered all of the available information, the Tribunal was not of the view that the Third Respondent was currently unable to meet the Applicant's costs and accordingly the Tribunal would make an immediate order for costs in the sum sought by the Applicant.

Statement of Full Order

247. The Tribunal Ordered that the Respondent Simon Paul Kenny, solicitor, be struck off the Roll of Solicitors and it further ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £56,853.79 such costs not to be enforced without leave of the Tribunal.

248. The Tribunal Ordered that as from 22nd day of May 2013 except in accordance with Law Society permission:

(i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Emma Coates;

(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitors practice the said Emma Coates;

(iii) no recognised body shall employ or remunerate the said Emma Coates;

(iv) no manager or employee of a recognised body shall employ or remunerate the said Emma Coates in connection with the business of that body;

(v) no recognised body or manager or employee of such a body shall permit the said Emma Coates to be a manager of the body;

(vi) no recognised body or manager or employee of such a body shall permit the said Emma Coates to have an interest in the body;

and the Tribunal further Ordered that the said Emma Coates do pay the costs of and incidental to this application and enquiry fixed in the sum of £44,152.08.

Dated this 15th day of August 2013
On behalf of the Tribunal

A. Banks
Solicitor Member
On behalf of K. Todner, Chairman